

Dobrich, et al.
Donald Hattier

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 10, 2006

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3
4 MONA DOBRICH and MARCO DOBRICH, individually and
as parents and next friend of ALEXANDER DOBRICH,
5 SAMANTHA DOBRICH, JANE DOE and JOHN DOE,
individually and as parents and next friend of
6 JORDAN DOE and JAMIE DOE,

7 Plaintiffs

8 vs.

Civil Action
No. 15-120

9
10 INDIAN RIVER SCHOOL DISTRICT, ET AL.,
11 Defendants
12

13 DEPOSITION OF DONALD HATTIER, taken at the
Indian River School District, 31 Hosier Street,
14 Selbyville, Delaware beginning at 9:36 a.m. on
October 10, 2006 before David A. Sroka, Registered
15 Professional Reporter and Notary Public.
16

APPEARANCES:

17
18 THOMAS ALLINGHAM, ESQUIRE
RICHARD HORVATH, ESQUIRE
19 BRIAN LENHARD, ESQUIRE
P.O. Box 636
20 Wilmington, Delaware 19899-0636
For the Plaintiffs

21
22

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3 JASON P. GOSSELIN, ESQUIRE
4 Drinker Biddle & Reath LLP
5 One Logan Square
6 Philadelphia, Pennsylvania 19103-6996
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1 defendants.
2 DONALD HATTIER,
3 The Witness herein, called for examination by
4 the Plaintiffs, having been duly sworn to tell the
5 truth, the whole truth, and nothing but the truth,
6 was examined and testified as follows:
7 MR. ALLINGHAM: Jason, I just want
8 to put a couple of things on the record.
9 The first one is, it is my impression that
10 you are not going to be interrupting
11 this deposition very much, but I want you
12 to know that if you want to make relevance
13 objections feel free. I'm not going to
14 accept invitations to explain the relevance
15 of my questions, I think that they are
16 relevant.
17 Q. Mr. Hattier, I represent the Plaintiffs in
18 this action against the district and I'm going to be
19 asking you some questions. If you don't understand
20 anything that I ask please tell me, don't answer the
21 question. If you do answer it the judge and
22 ultimately even the jury will probably assume that
23 you did understand it, so if you do have a problem
24 with a question cut me off at the pass now, okay?

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1 MS. DUPHILY: This is the
2 videotape deposition of Dr. Donald G.
3 Hattier taken by the Plaintiff in the
4 matter of Dobrich, et al., versus Indian
5 River School District, et al., case number
6 15-120. This deposition is taking place at
7 31 Hosier Boulevard, Selbyville, Delaware.
8 We are going on the record on October 10,
9 2006 at approximately 9:37 a.m.
10 The court reporter is David Sroka
11 from the firm of Wilcox & Fetzer,
12 Wilmington, Delaware. My name is Lindsay
13 duPhily I'm the videotape specialist of
14 Discovery Video Services in association
15 with Wilcox & Fetzer.
16 Counsel will now introduce
17 themselves and then the court reporter will
18 swear in the witness.
19 MR. ALLINGHAM: Tom Allingham of
20 Skadden Arps. With me is Rick Horvath and
21 Brian Lenhard also of Skadden Arps,
22 representing the Plaintiffs.
23 MR. GOSSELIN: Jason Gosselin of
24 Drinker Biddle & Reath representing the

1 A. Yes, sir.
2 MR. GOSSELIN: Can I respond? I
3 appreciate the instruction to me, I'm going
4 to follow the rules and if I have an
5 objection to the form I will say objection.
6 If there is a reason that I think Dr.
7 Hattier should not answer I will instruct
8 him not to answer. There is a Discovery
9 order in the case the prescribes what the
10 subject matter of discovery is in this case
11 and obviously I think that a questioner
12 should get leeway, but if it goes far
13 afield my -- I won't ask you to explain the
14 relevance of your questioning, but there
15 might come a point where we think that we
16 are straying into territory that goes
17 beyond the court's order.
18 So --
19 MR. ALLINGHAM: Understood.
20 Q. Dr. Hattier, when we were off the record
21 you asked the videographer to identify you as Dr.
22 Hattier, that's the way you prefer to be addressed?
23 A. Yes, sir, please for the purposes of a
24 professional situation.

2 (Pages 2 to 5)

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1 Q. Have you been deposed before?
2 A. Yes, sir.
3 Q. How many times?
4 A. Somewhere between 18 and 22.
5 Q. Well, we can cut that down to 19, 20 or 21
6 then, right?
7 A. The last time I did an official deposition
8 was about five years ago went I decided I no longer
9 wanted to do personal injury or Workman's Comp work
10 in my practice.
11 Q. Could you tell me do all the depositions
12 fall into the same basic category?
13 A. In what sense, sir.
14 Q. Subject matter?
15 A. Yes, sir.
16 Q. Was is that category?
17 A. Chiropractic expert witness.
18 Q. You and I both seems to have a tendency
19 that I can identify already of trampling on each
20 other. We need to wait, I will wait for you to
21 finish you need to wait for me to finish so that the
22 reporter can get everything that each of us says?
23 A. Yes, sir.
24 Q. And I'm sorry, would you just give me the

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1 answer again?
2 A. Okay, I have been deposed several times as
3 an expert witness in chiropractic.
4 Q. Were all of those deposition given in
5 Sussex County?
6 A. No, sir I gave several of them in
7 Salisbury, one in Snow Hill and remainder of them
8 would have been in Sussex County to the best of my
9 recollection.
10 Q. And in giving your testimony as an expert
11 witness in chiropractic did you offer that testimony
12 in support of plaintiffs or defendants or both?
13 A. Both.
14 Q. The contacts for serving as an expert
15 witness did those come from attorneys?
16 A. Yes, sir.
17 Q. And was it one attorney or more than one
18 attorney?
19 A. It was more than one attorney, sir.
20 Q. Have you ever testified at trial?
21 A. I can specifically recall one time at
22 trial, there may have been two.
23 Q. When did those one or two instances take
24 place?

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1 A. Approximately 1991 or 1992.
2 Q. Is that in the Superior Court of the State
3 of Delaware?
4 A. The time that I testified in a court was in
5 Salisbury, whatever the designation of that court
6 happens to be.
7 Q. Who was the lawyer with whom you were
8 working on that case?
9 A. I do not recall at this time.
10 Q. You said that you no longer do Workers'
11 Comp in your practice as a chiropractor, is that
12 right?
13 A. I will take a Workers' Comp case if a
14 patient seeks me out. I do not actively recruit
15 them anymore. Frankly I just found it be a type of
16 a work that I didn't enjoy very much.
17 Q. I take it from your previous answer that
18 you formerly sought out Workers' Comp cases?
19 A. Yes, sir.
20 Q. And why is it that you don't enjoy those
21 cases very much?
22 A. Quite frankly I didn't like being deposed
23 and going to court.
24 Q. That's a common complaint?

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1 A. Yes, sir.
2 Q. Has a judge or other judicial officer
3 arbitrator or whatever ever questioned the truth or
4 veracity of your testimony?
5 A. No, sir.
6 Q. I should have asked you this earlier, are
7 you taking any medications today that would prevent
8 you from giving full and comprehensive answers?
9 A. No, sir.
10 Q. Can you think of any reason why you
11 wouldn't be able to handle my questions truthfully?
12 A. None that I think of, sir.
13 Q. Have you spoken with anyone, and I want to
14 break this out, other than your attorneys in this
15 case about this litigation?
16 A. I have spoken with my fellow Board members.
17 I have spoken in general terms with members of the
18 public who asked for information on it, and I have
19 spoken with my attorney. And my wife and I have
20 discussed it at various times. I do try to keep my
21 responses to the general public to those things that
22 we have been allowed to discuss by the judge.
23 Q. Have you - I'm sorry, what do you mean by
24 you have been allowed to discuss by the judge?

3 (Pages 6 to 9)

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1 **A. If I recall correctly Judge Farnan has at**
2 **one time put a gag order on us in terms of what we**
3 **could discuss and what we couldn't and we did abide**
4 **by that gag order.**
5 Q. We being the Board members?
6 **A. Let me take that back, I'm speaking for**
7 **myself, me being me.**
8 Q. In a case like this where we have you know
9 multiple Board members, the frequent habit of
10 referring to ourselves as we is on that would be
11 helpful for clarity sake if you could avoid and just
12 refer to I or me?
13 **A. Yes, sir.**
14 Q. All right, so as you understood it there
15 was a gag order imposed by Judge Farnan?
16 **A. Yes, sir.**
17 Q. Who told you it was a gag order?
18 **A. I believe it was the original two Johns**
19 **that had sent our some material and then I heard**
20 **about it through some of the fellow Board members**
21 **when we discussed it.**
22 Q. And the Johns was Mr. Balliger and
23 Mr. Cafferty?
24 **A. Yes, sir.**

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1 Q. Did they describe that order to you as a
2 gag order?
3 **A. That's essentially how it came across, yes.**
4 Q. Well, my question was did the use the word
5 gag order?
6 MR. GOSSELIN: Objection and don't
7 answer that. I think this is --
8 MR. ALLINGHAM: I will withdraw
9 the question.
10 MR. GOSSELIN: Thank you.
11 Q. All right, your discussions with other
12 Board members, did those take place only in Board
13 meetings or did you also speak with them outside of
14 Board meetings?
15 **A. We have also spoken outside of Board**
16 **meetings.**
17 Q. Is that a frequent occurrence?
18 **A. I wouldn't describe it as frequent. We**
19 **don't get together as a rule and we don't call each**
20 **other that much.**
21 Q. Can you recall individual instances outside
22 of Board meetings where you have discussed this
23 litigation with other Board members?
24 **A. Specific details?**

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1 Q. Yes.
2 **A. No, sir.**
3 Q. Members of the public with whom you've
4 spoken about this litigation, can you identify any
5 of them?
6 **A. I've had a multiple series of phone calls**
7 **from people expressing support for our position. We**
8 **have had a few who have expressed lack of support**
9 **for the position. If I went back over my notes I**
10 **could probably come up with one or two specific**
11 **individuals. I mean --**
12 Q. Were these limited to phone calls or did
13 you also get e-mails and/or personal encounters with
14 the public?
15 **A. Yes, sir.**
16 Q. That is to say it was limited to phone
17 calls?
18 **A. No, it's all of the above.**
19 Q. Okay, great. You referred in your earlier
20 answer to if you went back over your notes you could
21 perhaps identify specific instances of contact with
22 the public?
23 **A. It's possible.**
24 Q. Do you keep notes of your contacts with the

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1 public regarding School Board matters?
2 **A. I keep a general series of notes as part of**
3 **a day timer system that I use to organize my office**
4 **and my private life, and there are sometimes where**
5 **I'm more specific in my entries than others. And**
6 **it's not related to just School Board things, it's**
7 **if you get really busy you write them all down. I'm**
8 **not an attorney in that sense, I don't log**
9 **everything.**
10 Q. Have you reviewed those notes to see
11 whether any of the notes in that system would be
12 responsive to the production request in this case?
13 **A. No.**
14 Q. Have you been used to review those notes?
15 **A. No.**
16 MR. ALLINGHAM: I call Jason for
17 production of those notes.
18 MR. GOSSELIN: Is that, what is
19 that?
20 MR. ALLINGHAM: It's a production
21 request directed to documents that seem
22 clearly to be responsive to certain
23 requests made in the production request.
24 MR. GOSSELIN: I mean, we can talk

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1 afterward about which request you think it
2 would respond to, and we can also talk
3 about the objections that we asserted to
4 those requests.
5 MR. ALLINGHAM: That's fine with
6 me and we don't need to do this on the
7 record, what I'm going to do during the
8 course of these depositions, if I identify
9 or the witness identifies documents that
10 I believe are responsive I will simply note
11 them for the record and I will be happy
12 to talk about them afterwards.
13 Q. When you referred to those notes of
14 conversations with the public are you aware of any
15 specific notes that do, are reflected on your
16 daytimer system I think it was?
17 A. Yes, sir.
18 Q. Are you aware of any specific notes that
19 are reflected on the daytimer system reflecting
20 conversations with the public about this litigation?
21 A. The notes that I do take would be related
22 to who called. I generally do not take notes of
23 what it is we discussed.
24 Q. Okay. You said that you discussed this

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1 litigation with your wife, is that a sort of an
2 ongoing practice of discussing it with your wife?
3 A. My wife can tell that there are times when
4 things weigh on me, and you know, we sit down and we
5 will discuss things.
6 Q. Your wife's name is Laura?
7 A. That is correct.
8 Q. Have you discussed this litigation or any
9 aspects of it with the rest of your family?
10 A. I believe my children have been privy to
11 some of the discussions at the dinner table.
12 Q. Do you know who the Doe family is?
13 A. I believe that I do, yes, sir.
14 Q. Have you made any efforts to confirm the
15 identity of the Doe family?
16 A. No, sir.
17 Q. Have you asked your wife to inquire about
18 the identity of the Doe family in any way directly
19 or indirectly?
20 A. No, sir.
21 Q. Have you asked your wife to inquire about
22 the identity of the Doe family in any way directly
23 or indirectly?
24 A. No, sir.

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1 Q. Have you asked your children to inquire
2 about the identity of the Doe family directly or
3 indirectly?
4 A. No, sir.
5 Q. Are you aware that your children have
6 inquired of members of the Doe family whether they
7 are the Doe family?
8 A. I am not aware of any such conversations.
9 Q. Would that surprise you?
10 A. Children are curious, maybe not.
11 Q. Have you had discussionis with among your
12 family about who the Doe family might be?
13 A. Early on we did have a discussion about it,
14 and that would have been with my wife.
15 Q. So you are not aware of any discussion in
16 your family with your children as to the Doe family
17 members are?
18 A. No, sir.
19 Q. Did you prepare for this deposition?
20 A. In what sense, sir.
21 Q. Did you meet with your attorneys before?
22 A. Yes, we did, or I did.
23 Q. Did you do anything other than meeting with
24 your attorneys to prepare for this deposition?

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1 A. No, sir.
2 Q. When did you meet with your attorneys?
3 A. I believe it was last Tuesday.
4 Q. For how long?
5 A. About three hours.
6 Q. Did you review any documents?
7 A. No, sir. I don't recall, we might have.
8 MR. GOSSELIN: We looked at the 30
9 (b)(6) deposition.
10 Q. I'm sorry, your answer is I don't recall I
11 might have?
12 A. I might have, I mean if Mr. Gosselin
13 brought something in then we looked at it, but other
14 than that no I didn't bring anything in with me,
15 neither did I look at anything other than what he
16 brought, no.
17 Q. You are familiar with the Indian River
18 School District's Board Prayer at Regular Board
19 Meetings Policy?
20 A. Yes, sir.
21 Q. Did you review that policy at your meeting
22 with your attorney?
23 A. Yes, we did.
24 Q. Did you review any minutes of meetings at

5 (Pages 14 to 17)

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1 which that policy or drafts of the were reviewed by
2 the Board?
3 **A. I believe we did.**
4 Q. Did those include both public meeting
5 minutes and executive committee meeting minutes?
6 **A. I'm not sure we looked at the minutes. We**
7 **discussed the generalities of it, but I don't**
8 **believe we looked at specific minutes of the**
9 **meetings, no.**
10 Q. When you say you discussed the generalities
11 of it, does that involve looking at a document, or
12 is that simply discussions back and forth with your
13 attorney?
14 **A. Discussions back and forth between the**
15 **Board members who were present and discussion with**
16 **the attorney.**
17 Q. The Board members who were present at the
18 preparation session?
19 **A. Yes, sir.**
20 Q. With this a preparation session at which
21 multiple Board members were present?
22 **A. There were three other Board members there.**
23 Q. Who were they?
24 **A. It was Greg Hastings, Charlie Bireley,**

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1 **there was one other, John Evans, was Reggie there,**
2 **no. It was just the four of us, right. I believe**
3 **that's correct.**
4 MR. GOSSELIN: Whatever you
5 remember.
6 Q. It's a terrible temptation to ask someone
7 else who was there, but it has to be your
8 recollection?
9 **A. There might have been five, but I can**
10 **specifically site four.**
11 Q. And there was a discussion among the Board
12 members about the generalities of the adoption of
13 the School Board Prayer Policy, is that what you
14 were getting at?
15 **A. Yes, sir.**
16 Q. In the context of that discussion did you
17 have occasion to try to recall the history of the
18 Board's consideration adsorption of that policy?
19 MR. GOSSELIN: Objection and don't
20 answer that. This was a meeting with
21 lawyers and clients before a deposition. I
22 have no objection to your asking about the
23 fact that the meeting took place, but I
24 object to anything that goes to the

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1 substance of that. And I don't object to
2 asking what documents he recalls looking
3 at, but beyond that I object to questions
4 about that meeting.
5 Q. Other than the Board prayer, I'm going to
6 call that policy which is titled Board Prayer at
7 Regular Board Meetings the School Board Prayer
8 Policy, if that's okay?
9 **A. That's perfect, sir.**
10 Q. Other than the actual School Board Prayer
11 Policy piece of paper, do you recall any other
12 document that you looked at during that prep
13 session?
14 **A. No, I do not recall.**
15 Q. Since the preparation session have you
16 reviewed any documents?
17 **A. No, sir.**
18 Q. Other than your attorney and the Board
19 members, whoever they were, who were present at the
20 prep session, was anyone else there?
21 **A. I believe there were two other attorneys**
22 **present at the time.**
23 Q. Were the attorneys with whom you met
24 Mr. Gosselin who is to your right today and other

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1 lawyers in his law firm, Drinker Biddle & Reath?
2 **A. I believe that to be true.**
3 Q. Okay. You full name is Donald G. Hattier,
4 is that correct?
5 **A. Yes, sir.**
6 Q. And you were born on October 1953?
7 **A. That is correct.**
8 Q. Were you born in Delaware?
9 **A. No, sir.**
10 Q. Where were you born?
11 **A. I was born in Triesta, Italy in the 381st**
12 **infantry hospital.**
13 Q. When did you come to the United States?
14 **A. In 1962.**
15 Q. How long have you lived in Delaware?
16 **A. I was lived in Delaware since February no,**
17 **I have lived her Delaware since approximately March**
18 **of 1990.**
19 Q. Do you consider yourself a long time
20 resident of Sussex County?
21 **A. I do, yes, sir.**
22 Q. Would you agree with me as a general
23 proposition that in Sussex County information and
24 news tends to travel by word of mouth as much as it

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1 does by newspaper or other formal media?
2 **A. In general terms I think that's probably**
3 **true.**
4 Q. I asked you earlier about your children,
5 you have two children, is that correct?
6 **A. I have four children, sir.**
7 Q. Four children. Would you tell me their
8 names?
9 **A. Kristin, age 16, Georgette age 14, Hanna**
10 **age 11 and Donald age eight.**
11 Q. Do they attend district schools?
12 **A. Yes, sir.**
13 Q. Which schools do they attend?
14 **A. I have two, the oldest two are at Indian**
15 **River High School at the current time. Hanna is at**
16 **Selbyville Middle School and Donald is currently at**
17 **the Lord Baltimore School.**
18 Q. My information may be a little stale so let
19 me just ask you, is your current address R.D. Box
20 114 Dagsboro?
21 **A. That was the old address before we went**
22 **911.**
23 Q. So, what's the address now?
24 **A. 30682 Holts Landing Road.**

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1 Q. How long have you lived there?
2 **A. Since March of 1990.**
3 Q. So, you were 27 when you moved her, 26, 27,
4 mid 20s?
5 **A. No, 30, 1990, 1953, 37, 36, 37, somewhere**
6 **in there.**
7 Q. I'm sorry, right. Where did you attend
8 college?
9 **A. I attended at the Virginia Polytechnic**
10 **Institute State University, currently known as**
11 **Virginia Tech.**
12 Q. And when did you graduate?
13 **A. 1975. That was for my Bachelor's in**
14 **Science.**
15 Q. I assume you have some kind of MD degree?
16 **A. I have a Chiropractic Degree, that's know**
17 **as a DC, Doctor of Chiropractic and that's from the**
18 **National College of Chiropractic and I graduated**
19 **there in December of 1985.**
20 Q. I assume that you didn't go straight to
21 chiropractic school?
22 **A. No, sir.**
23 Q. What did you do in-between?
24 **A. In-between I ran a McDonald's for two and a**

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1 **half years, I went to work for the State of Virginia**
2 **in a power plant as a superintendent and a steam**
3 **fitter, I taught motorcycle safety at the Northern**
4 **Virginia Community College for a number of years,**
5 **and in the process injured my spine several times.**
6 **Then I was hired by IBM to work as what was called a**
7 **customer engineer on fixing typewriters, mag cards,**
8 **copiers and it was through that time period that I**
9 **was teaching motorcycle safety and my spine kept**
10 **acting up. I was slated for surgery for a sciatica**
11 **case and basically discovered chiropractic. I'm**
12 **single, I'm age 29, I sell my townhouse, my Cadillac**
13 **I go back do college.**
14 Q. And you are employed now as a chiropractor?
15 **A. Yes, sir.**
16 Q. Self-employed?
17 **A. Yes, sir.**
18 Q. Is there a name of the practice or is it
19 simply Dr. Donald G. Hattier?
20 **A. My sister and I recently formed loose**
21 **partnership, we call ourselves the Beach View Health**
22 **Associates. Previous to that it was the Beach View**
23 **Chiropractic Center.**
24 Q. Where is your office located?

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1 **A. 550 Atlantic Avenue in Millville, Delaware.**
2 Q. I'm speaking financially now, Dr. Hattier,
3 how much has this litigation cost you personally?
4 **A. I don't know.**
5 Q. Are you aware of any expenses that this
6 litigation has caused you to incur?
7 **A. A general answer would be at various times**
8 **off from work to attend meetings, but my schedule is**
9 **somewhat flexible so again I don't know what to say**
10 **to that.**
11 Q. How much has this lawsuit cost the
12 district?
13 **A. That's a good question, I don't know.**
14 Q. Is that a fact that you would consider
15 important in weighing the considerations that you
16 gave in adopting the School Board Prayer Policy.
17 MR. GOSSELIN: Objection, don't
18 answer that. That goes beyond the
19 discovery order that the judge entered.
20 MR. ALLINGHAM: I disagree.
21 Q. In considering the adoption of the School
22 Board Prayer Policy did you consider the costs of
23 litigation that would ensue if the policy were not
24 adopted?

7 (Pages 22 to 25)

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1 MR. GOSSELIN: Objection, don't
2 answer that.
3 Q. In considering the School Board Prayer
4 Policy and its adoption, did you consider the costs
5 that would be avoided if it were not adopted?
6 MR. GOSSELIN: Object, same
7 instruction.
8 Q. Was that a matter of irrelevancy to you?
9 MR. GOSSELIN: Objection, don't
10 answer it.
11 Q. Have you discussed with anyone how the
12 School Board or the district will pay it's costs of
13 this litigation if the district's insurance carrier
14 does not have to pay the legal fees?
15 MR. GOSSELIN: Objection, don't
16 answer that. Tom, I've got patience, it's
17 early in the morning, but we have been here
18 for half an hour. I don't mind the
19 background, you are entitled to do that,
20 but all of these other -- if we are going
21 to spend six hours asking questions on
22 topics that the judge has already ruled are
23 not relevant in this phase of discovery and
24 perhaps not relevant at all, we might as

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1 well stop now.
2 MR. ALLINGHAM: My goal in
3 suggesting to you that I suspect that
4 you and I disagreed about the scope
5 of relevance was to urge you to do
6 precisely what you suggested you would do,
7 which is to lodge an objection without a
8 speech and then if you think that the
9 questions have become a pattern or practice
10 of harassment, which I don't think that
11 they will, to take what steps you need to
12 take. It's pointless for us to engage in
13 speechifying back and forth and I think we
14 will go faster if we don't.
15 Q. Are you aware of any donations take the
16 district, the School Board, or the School Board
17 members have received to finance their defense of
18 this litigation.
19 MR. GOSSELIN: Objection, don't
20 answer that.
21 Q. You mentioned earlier that you had had
22 comments from the public about the School Board's
23 position vis a vis this litigation, correct?
24 A. Yes, sir.

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1 Q. And you mentioned that some were in favor
2 and I think you said a lesser number were opposed to
3 the Board's position generally?
4 A. Yes, sir.
5 Q. And does it matter to you what your
6 constituents think in these areas?
7 A. I would say yes it does.
8 Q. And tell me what consideration you gave to
9 your constituencies' expressed views on the matters
10 addressed in this litigation?
11 A. I listened to what they had to say on both
12 sides of the issue. And ultimately it boils down to
13 my own conscience which is what I tend to go with.
14 Q. During the course of it consideration and
15 adoption of the School Board Prayer Policy, did you
16 or your fellow Board members have discussions of
17 that issue, that is what impact the views of your
18 constituencies should have on your consideration of
19 the Board Prayer Policy?
20 A. There may have been some general
21 discussions regarding that. I believe that the
22 generally accepted viewpoint was that this is
23 something that folks in our area would strongly
24 support.

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1 Q. And was there a discussion how -- strike
2 that.
3 How was that general consensus identified?
4 Was there polling, was there anecdotal evidence, how
5 did you arrive at that --
6 A. I think probably anecdotal evidence based
7 on the familiarity we have with the people in the
8 community. This is still a fairly small community
9 compared to a lot of other places.
10 And I think virtually all of the Board
11 members know a lot of people in the public, you
12 know, it's not like being in Wilmington or where my
13 family is in Fairfax County, Virginia. This is not
14 that kind of an environment.
15 Q. So you sense is that the Board members
16 collectively know most of the people in the
17 district?
18 A. A good chunk of them, yes, sir.
19 Q. What's a good chunk?
20 A. I'd say a good 15, 20, 30, 40 percent
21 depending on how long they've been here.
22 Q. A good 15, 20, 30, 40 percent depending on
23 how long they've been here. Let me break that down
24 a little bit. Depending on how long they have been

8 (Pages 26 to 29)

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1 here, refers to the residents of the district or the
2 Board members?
3 **A. The Board members.**
4 Q. Okay, my question earlier had to do with
5 collectively, not individually, but collectively is
6 it your view that the Board members are acquainted
7 with a majority of the residents of the district?
8 MR. GOSSELIN: Objection.
9 You can answer that one.
10 **A. I'm speculating, I'm speculating when you**
11 **use the word majority, I would have to say probably.**
12 **Certainly based on the votes that have happened in**
13 **the past.**
14 Q. Certainly based on the votes that happened
15 in the past, could you spin that out for me what you
16 mean?
17 **A. Sure, the people who have run for elections**
18 **on various platforms and how the numbers come out**
19 **with those, and a lot of times the margins are**
20 **fairly wide.**
21 Q. That's a different question from how many
22 residents of the district Board members are
23 acquainted with?
24 **A. Uh-hum.**

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1 Q. When I asked you how you formed the view
2 that your constituents, your constituents, the
3 general consensus was that they supported the Board
4 policy, you identified as the means by which that
5 consensus was identified, the Board members general
6 acquaintance with the residents of the district do
7 you recall that?
8 **A. Yes, sir.**
9 Q. And what I'm trying to get at now is, is
10 your view about how many of those residents the
11 Board members collectively are really acquainted
12 with. So, let me just ask some preliminary
13 questions. How many residents are there in the
14 Indian River School District?
15 **A. I don't know.**
16 Q. Well, let me ask you this question, how
17 many residents of the Indian River School District
18 do you believe you know well enough to be confident
19 that you know there views on the Board's positions
20 in this litigation?
21 MR. GOSSELIN: Objection.
22 Q. Unless you are instructed not to answer you
23 can answer.
24 **A. Okay. Being a practicing chiropractor in**

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1 **the area, and knowing my patient base of about 6,000**
2 **people give or take, and having talked to a lot of**
3 **people over a lot of time periods, can I quantify**
4 **every single one of them, no, but having talked to a**
5 **multiplicity of people of people, reading the**
6 **editorials in the newspaper, what you hear on the**
7 **street, what you hear through church forums, I would**
8 **say several thousand.**
9 Q. You feel confident that you know the views
10 of several thousand residents of the district on the
11 positions that the Board has taken in this
12 litigation?
13 **A. Within those areas where my influence would**
14 **reach. The Indian River School District is broken up**
15 **into five different regions, I'm region four. And**
16 **that's the ones that I can comment on because that's**
17 **where my patient base and where most of the people**
18 **that I come into contact with would be.**
19 Q. You mentioned the vote of constituents on
20 particular Board members?
21 **A. Uh-hum.**
22 Q. Spin that out for me a little bit, how does
23 that help you know what the consensus is in the
24 district on the matters that are the subject of this

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1 litigation?
2 **A. I know that in the last election in**
3 **specific it had come up as an issue. It was also an**
4 **issue when I ran the last time, and the vote in**
5 **favor of me at that time was roughly two to one in**
6 **favor of my position. With Mr. Bireley when he**
7 **recently ran the vote was a little bit closer, I**
8 **think he had 1300 to roughly 1000, and it was highly**
9 **motivated and I believe this was part of the factor**
10 **in the last two elections.**
11 **I believe that if you look at the races**
12 **that were up in the Georgetown area that it was**
13 **probably a factor up there as well.**
14 Q. Is it your sense that the vote in the
15 recent election in which Mr. Bireley prevailed was
16 representative of the positions of the constituents
17 who voted on the School Board prayer issue?
18 MR. GOSSELIN: Objection.
19 **A. I believe it was one of the factors. There**
20 **were other issues with that particular election as**
21 **well.**
22 Q. All right, you identified that election as
23 one of the factors that led you to conclude that the
24 constituents' views are supportive of the Board's

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1 positions here, tell me how you evaluated that
2 election as one piece of evidence for that
3 consensus?
4 MR. GOSSELIN: Objection.
5 **A. By reading the editorials, by listening to**
6 **what the folks on the talk radio were talking about,**
7 **by what I heard in the community and then basically**
8 **by the vote itself. As I stated, there were other**
9 **issues at that time, too. I don't believe that any**
10 **of the elections here are single issue elections,**
11 **but I do believe that it played an important part in**
12 **what it was.**
13 Q. Well, by way of example, did Mr. Bireley
14 campaign on the School Board Prayer Policy issue?
15 **A. Not to my knowledge.**
16 Q. Are you aware that Mr. Bireley and persons
17 representing Mr. Bireley visited senior centers in
18 Sussex County and during those visits said that they
19 should be voted for because they are for prayer and
20 they are fighting the ACLU in court?
21 MR. GOSSELIN: Objection.
22 **A. I'm not aware of that, no.**
23 Q. You never heard that?
24 **A. No.**

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1 Q. Of course he is in a different district
2 than you are?
3 **A. No, he's in my district.**
4 Q. So, you didn't hear anything about that
5 despite the fact that you are in the same district?
6 **A. I didn't hear anything about that.**
7 Q. This is the district where you have your
8 finger on the pulse of the constituency?
9 MR. GOSSELIN: Objection.
10 **A. You know, you are using the word finger on**
11 **the pulse of the constituency but I will tell you**
12 **that I hear from different people than Mr. Bireley**
13 **does.**
14 Q. All right, in formulating your view that
15 the majority of your constituency supports the
16 Board's positions have you considered donations that
17 have come into the Board for the defense of this
18 litigation?
19 MR. GOSSELIN: Objection, don't
20 answer that.
21 Q. Do you consider that the district as
22 fighting the ACLU in this litigation?
23 MR. GOSSELIN: Objection, don't
24 answer that.

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1 Q. What is your understanding, if any, about
2 the connection between the ACLU and the Plaintiffs'
3 side of this litigation?
4 **A. My understanding is that the Plaintiffs**
5 **went to the ACLU for support, as well as pro bono**
6 **help.**
7 Q. Where did you get that understanding?
8 **A. Basically because that's what people do**
9 **when they are in this situation and they need**
10 **somebody else to turn to.**
11 Q. That's what people do, being they go to the
12 ACLU?
13 **A. Yes, sir.**
14 Q. And what is the situation that would lead
15 people to turn to the ACLU?
16 **A. If individuals feel they have a case in**
17 **certain areas the ACLU is known to defend and**
18 **litigate in this type of a situation. That's my**
19 **general understanding.**
20 Q. And what is this type of case you are
21 talking about?
22 **A. First Amendment freedoms.**
23 Q. And I'm sorry I may be summarizing
24 incorrectly, so forgive me if I am, sometimes I lose

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1 track of things?
2 **A. Me, too.**
3 Q. It is your understanding that the
4 Plaintiffs went to the ACLU for help and then
5 retained pro bono counsel?
6 **A. That is my understanding.**
7 Q. Okay. Let me pose a more specific question
8 then. What is your understanding about the ACLU's
9 ongoing connection with the litigation post
10 retention of pro bono counsel, if any?
11 **A. My understanding is that the ACLU would be**
12 **guiding them, providing the counsel and basically**
13 **running the case. I'm not an attorney so I do not**
14 **understand the intricacies of running a case like**
15 **this.**
16 Q. And where did you get that understanding?
17 **A. Reading the newspapers, listening to what's**
18 **on the radio, just understanding how the ACLU**
19 **generally does these kind of cases based on what**
20 **I've read in the past.**
21 Q. You understand that the ACLU has been made
22 an important part of the dialogue on this litigation
23 and the positions that the Board has taken in
24 connection with this litigation, correct?

10 (Pages 34 to 37)

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1 **A. Rephrase that please?**
2 MR. GOSSELIN: Objection.
3 Q. I'm trying to among all the people who have
4 spoken up in print, to you personally, a significant
5 portion of them have commented negatively or maybe
6 positively on the ACLU's connection to this
7 litigation, correct?
8 **A. I'd say that's a fair statement.**
9 Q. Are you concerned at all that the consensus
10 that you've identified among your constituencies is
11 affected by the ACLU's connection to this lawsuit?
12 MR. GOSSELIN: Objection.
13 **A. No.**
14 Q. And is that because you are confident that
15 the ACLU is in fact connected to this lawsuit?
16 **A. No, that's not why.**
17 Q. You just don't care whether people are
18 making their decision based on the ACLU's
19 connection?
20 **A. No.**
21 Q. Explain to me why you are not concerned?
22 **A. Because I think that the issue rises beyond**
23 **the ACLU. I mean they might be the attorneys in**
24 **this particular case and people can be turned on or**

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1 **off by the ACLU and I know the ACLU has a number of**
2 **supporters and I believe that they have done some**
3 **very good things in the past and they will probably**
4 **do some good things in the future, but I think this**
5 **issue stands or falls regardless of what the ACLU**
6 **does or doesn't do.**
7 Q. I understand Dr. Hattier that that is your
8 view and I assure you that I do respect it. My
9 question, though, had to do with your concern about
10 the reasons for the development of the consensus
11 among your constituents, that is to say are you
12 worried that they are making their decisions or
13 formulating their positions based in whole or in
14 part on the ACLU's alleged connection to this
15 lawsuit?
16 **A. No, sir.**
17 Q. Why is that it?
18 **A. Because I believe that the people of this**
19 **area generally, excuse me, genuinely believe that**
20 **the prayer before School Board meeting as we have**
21 **outlined it is something that is part and parcel of**
22 **the fabric of the community that has been going on**
23 **for many, many years. Congress does it,**
24 **legislatures do it, it's printed above the halls of**

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1 **the Supreme Court and I believe that they view this**
2 **as simply something that is either right or not, and**
3 **I don't think that it has much to do with what the**
4 **ACLU's feelings are.**
5 **You guys just happen to be the messenger,**
6 **well not the messenger, you guys just happen to be**
7 **the ones working with the other side.**
8 Q. You guys being?
9 **A. I'm assuming, sir that you are working with**
10 **or associated with the ACLU and if that's a false**
11 **assumption then I would stand corrected.**
12 Q. And you've given me the basis for that
13 assumption already, correct?
14 **A. Well, I'm assuming that I'm assuming that**
15 **since the ACLU has become involved in the case and**
16 **you are the attorney working with the Does and the**
17 **Dobriches that you would be associated with them.**
18 **And if that's not a valid assuming please correct**
19 **me.**
20 Q. When you gave your answer about Congress
21 opening its sessions and it being printed above the
22 doors of the Supreme Court what did you mean by the
23 it?
24 **A. Specifically Congress opens with a prayer**

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1 **of some sort, or a solemnization procedure and in**
2 **God we trust is printed in a lot of our public**
3 **buildings, and I know most legislatures, if not all,**
4 **have a moment where they solemnize their procedures.**
5 **So, in this case the use of it word it was perhaps a**
6 **bit general.**
7 Q. Because what's over the portals of the
8 Supreme Court is different in some way from what
9 Congress opens its sessions with, correct?
10 **A. Correct.**
11 Q. Indeed what Congress opens its sessions
12 with changes every time Congress opens its session,
13 right?
14 **A. The specific prayer solemnization I believe**
15 **changes each time. But I believe the general idea**
16 **behind the solemnization that they use is**
17 **essentially the same.**
18 Q. Fair enough. What you're getting at is
19 Congress regularly seeks somehow to solemnize the
20 opening of its session?
21 **A. That's correct.**
22 Q. And is it your sense that — you seem to be
23 somewhat of a student of this issue, is it your
24 sense that what Congress does is an appropriate way

11 (Pages 38 to 41)

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1 to solemnize its session?
2 **A. I believe that it is something that has**
3 **been going on in American history since**
4 **approximately three days after the Constitution was**
5 **accepted, and I believe that that's something that**
6 **our founding fathers definitely stood for, and I**
7 **believe that it is wholly appropriate.**
8 Q. I think I didn't ask my question carefully
9 enough.
10 **A. Okay.**
11 Q. Are you familiar with the prayers with
12 which Congress has opened its sessions, and if so do
13 you believe that those are appropriate ways to
14 solemnize Congress' proceedings?
15 MR. GOSSELIN: Objection.
16 MR. ALLINGHAM: On the basis that
17 it's compound, I will be happy to break it
18 up?
19 MR. GOSSELIN: Yes.
20 Q. Have you had occasion to look at some of
21 the prayers with which Congress opens its sessions?
22 **A. Occasionally.**
23 Q. And have you seen any such prayer that you
24 thought was an inappropriate way to solemnize the

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1 proceedings?
2 **A. No, sir.**
3 Q. Did you think that the prayers, at least
4 the one that you looked at, were effective ways to
5 solemnize the proceeding?
6 **A. I believe so.**
7 Q. Where did you find the prayers?
8 **A. Internet.**
9 Q. I'm going to ask the reporter to mark as
10 how shall we do this, Hattier Exhibit 1, a document
11 which bears Bates numbers, it has two Bates numbers.
12 It's a Bates number, a Bates number is a number
13 that's stamped at the bottom of the page, I don't
14 know why they are called Bates numbers, probably
15 some guy names Bates is making lots of money off
16 this.
17 **A. Kind of like the Dewey decimal system.**
18 Q. But, you identify the document by the
19 number so that people can figure out what it was
20 that we were talking about later.
21 **A. That's fine.**
22 Q. A document bearing Bates number
23 IRS00500581.
24 (WHEREUPON Hattier Exhibit 1 was

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1 marked for identification)
2 Q. Would you take a look please at Hattier
3 Exhibit 1?
4 **A. Yes, sir.**
5 Q. Have you ever seen it before?
6 **A. I'm going to say maybe. We get a lot of**
7 **things that are faxed in to us in the office which**
8 **where I receive them, I glance at them. A lot of**
9 **cases we pitch them right away. There is just so**
10 **much of it.**
11 Q. Okay. You notice that this is a letter
12 from Mrs. Hobbs to Mr. & Mrs. Jay Widdoes of
13 Wilmington and that the Board of Education is
14 copied.
15 **A. Yes.**
16 Q. You would have been one would have been one
17 of the members of the Board of Education?
18 **A. Yes, sir.**
19 Q. But you just don't recall one way or
20 another whether you got this?
21 **A. No, sir. Like I said, we get between one**
22 **and two faxes like this, sometimes I get three a**
23 **day, sometimes it's one every two or three days and**
24 **my staff puts the on my desk. I read them. If they**

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1 **require a response we address them, otherwise I**
2 **glance at them figuring I will remember it and then**
3 **pitch them. We don't have an organized way to save**
4 **these, there is too many of them.**
5 Q. This letter refers to a donation to help
6 with the litigation of the prayer issue in the
7 Indian River School District and it's a thank you
8 note from Ms. Hobbs the superintendent.
9 Do you know whether Mr. & Mrs. Jay Widdoes
10 in fact made a donation to help with the litigation
11 of the prayer issue in the Indian River School
12 District?
13 **A. I'm going to assume based on the language**
14 **of the letter that they did.**
15 Q. Do you know whether any other such
16 donations were received and acknowledged in this
17 way?
18 **A. No, sir.**
19 Q. Is there a fund that's been established for
20 the defense of this litigation to which persons can
21 make a donation?
22 **A. My understanding was is that there had been**
23 **a donation of some type at same time, and that as a**
24 **result of that a fund had been established. I do**

12 (Pages 42 to 45)

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1 not know the status of it.
2 Q. Who is in charge of it, Miss Hobbs?
3 A. I am going to assume the superintendent or
4 her secretary.
5 Q. Who is Patrick Miller?
6 A. Patrick Miller is our finance director.
7 Q. I guess he could also be the person who is
8 in charge of this fund, right?
9 A. Patrick Miller being the finance director
10 is the person we lean to in financial areas to make
11 sure that we in compliance with what the state would
12 want us to do.
13 Q. I'm going to litter your room, but I'm
14 going to pick it up when I'm done. Do you recall
15 any discussion at the Board level about donations
16 received to assist with the defense of the
17 litigation?
18 A. It might have been mentioned once. The
19 specific details, no, I do not.
20 Q. Do you recall anyone saying well this shows
21 that we have the support of our constituents?
22 A. More than likely.
23 Q. Do you consider Mr. & Mrs. Widdoes one of
24 your constituents?

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1 A. Not if they are from Wilmington, no, unless
2 they have a summer property down here. I'm not
3 familiar with them individually, if that's what
4 you're asking.
5 Q. All right, let me turn. Let me start on a
6 different topic before we end the tape. Do you have
7 any e-mail accounts?
8 A. E-mail accounts, yes, sir.
9 Q. Do you know how many?
10 A. I use one main account for home, we use one
11 for the office, we have one on the front desk which
12 is used by the front desk for sending insurance
13 forms and purposes only, maybe three, four.
14 Q. Have you ever sent or received any e-mails
15 about School Board meetings or the substance of the
16 discussions at School Board meetings?
17 A. That's a pretty broad question.
18 Q. It's intended to be.
19 A. I understand that. I'm going to say we
20 probably have received e-mails, discussing and
21 sending it back out. I try to avoid that, you know,
22 sometimes when you write things down and send them
23 out you can put your foot in your mouth fairly
24 easily, and I have put my foot in my mouth on other

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1 issues and try to avoid that when possible.
2 Q. Okay, your answer you said I guess we have
3 received, in that case you are talking about I have
4 received?
5 A. I have received, that is correct, I
6 apologize.
7 Q. The Internet service provider through which
8 you receive e-mails for each of the e-mails, can you
9 tell me the address and the service provider?
10 A. For a long time we used a company called
11 splus.net.
12 Q. And again that we is you?
13 A. That is me, my apologies? We in this case
14 would probably refer to the office.
15 Q. Okay.
16 A. Verizon.net and MCHSI.com. I used
17 netzero.net or dot com briefly around the 2000 to
18 2002 time period and I had an account with MSN back
19 in the time period as well but we dropped those
20 many, many moons back.
21 Q. Okay, so let me just restrict it to say
22 January 2003 forward. Your e-mail addresses were on
23 either splus net, verizon net or --
24 A. At that time period strictly splus.

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1 Q. Okay and that's the service provider you
2 use today?
3 A. No, sir.
4 Q. What do you use today?
5 A. Verizon and MCHSI.
6 Q. Okay. When did you switch over to Verizon
7 and MCHSI?
8 A. Verizon we switched to for the office in
9 about 2004, give or take. We had MCHSI briefly in
10 the office at the same time period, discontinued
11 them due to the expense and MCHSI.com at home for
12 probably since about let's say 2004 or 5, even
13 though we did not use their e-mail services until
14 recently. Everything was filtered through the
15 splus.
16 MR. ALLINGHAM: We are going to
17 break to change the tape, okay.
18 MS. DUPHILY: We are going off the
19 record at 10:32 a.m..
20 (WHEREUPON a brief recess was
21 taken)
22 MS. DUPHILY: we are back on the
23 record at approximately 10:42 a.m..
24 Q. Just to return to something discussed in

13 (Pages 46 to 49)

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1 the first hour, the Bireley Wilson election in
2 whenever it was February or March is it your sense
3 that the vote in that election roughly represents
4 the position of the constituents in the fourth
5 district on the issue of School Board prayer?

6 MR. GOSSELIN: Objection.

7 **A. In the sense that the proportion of the**
8 **voters who voted for Mr. Bireley versus Mrs. Wilson,**
9 **excuse me, Dr. Wilson reflect the breakdown within**
10 **the community, no I do not. I believe you had some**
11 **very long term family friend and social**
12 **relationships that played a role in that vote. I**
13 **believe that the prayer position issue played part**
14 **of it, but I'm not sure that that was the entire**
15 **matter.**

16 Q. The long term friend issue, which way did
17 that cut, did that get Dr. Wilson more votes or did
18 that get Mr. Bireley more votes?

19 MR. GOSSELIN: Objection.

20 **A. My personal feeling, okay, and this is pure**
21 **speculation is that it probably got Dr. Wilson more**
22 **votes.**

23 Q. Mr. Bireley has been around here for a long
24 time, hasn't he?

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1 **A. Mr. Bireley has been here for many years.**

2 Q. Let's come back to e-mails and documents.
3 Have you ever, I asked you if you had ever sent or
4 received any e-mails about School Board meetings or
5 the substance of discussions at School Board
6 meetings, and you said I believe?

7 **A. That is correct.**

8 Q. Probably, but you are not sure?

9 **A. That's also correct.**

10 Q. Have you ever sent or received any e-mail
11 about School Board prayer in particular?

12 **A. If I have sent anything on that and again I**
13 **can't recall specifics, it would be limited to what**
14 **I would consider to be the historic discussion of**
15 **prayer within the United States itself.**

16 Q. And when I refer to e-mails I also mean to
17 include, and you can change your answer if it
18 changes your answer, posting to bulletin boards, do
19 you understand that?

20 **A. Yes, sir.**

21 Q. Have you ever sent or received any e-mail
22 or postings about policies under consideration by
23 the School Board?

24 **A. I don't believe we sent policy via an**

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1 **e-mail. And I don't think, and I could be wrong on**
2 **this, but I don't think that that's something that**
3 **would happen electronically. We tend to do that in**
4 **person at meetings.**

5 Q. Okay.

6 **A. That's my recollection of that.**

7 Q. Have you sent any e-mails to persons other
8 than Board members about policies that were then
9 under consideration by the School Board?

10 **A. No, I wouldn't do that, I don't feel as if**
11 **that's something I would do.**

12 Q. Because it would be inappropriate to
13 discuss policies under consideration by the Board
14 with members of the public?

15 **A. That would be my feeling.**

16 Q. Do you think that consideration of policies
17 by the Board should be done as a matter of public
18 satchel?

19 **A. They are.**

20 Q. Why then would be it inappropriate to
21 discuss policy under consideration with an
22 individual member of the public?

23 **A. My feeling is that as a School Board member**
24 **I'm one of ten. I do not act individually. If we**

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1 **are going to adopt a policy it's something that**
2 **should be discussed as a group and then the public**
3 **has a right to see what we discussed as a group.**

4 Q. And is it your sense that the Board's
5 consideration and adoption of policies is always
6 done in public situation?

7 **A. To the best of my knowledge.**

8 Q. And that would include the School Board
9 Prayer Policy that's at issue here today?

10 **A. It was presented to the public at several**
11 **meetings, yes. At least at one.**

12 Q. One public meeting?

13 **A. When it came to the adoption of the School**
14 **Board Policy, the School Board Prayer Policy, we did**
15 **present it, we normally do it over a two month**
16 **period where it's presented to the public and then**
17 **brought out, but I think in this case we actually**
18 **had our first and second readings on the same date**
19 **to speed the policy up.**

20 Q. How frequently do you delete your e-mail?

21 **A. Not very.**

22 MR. GOSSELIN: Can you do it more
23 than once?

24 Q. That was a poorly phrased question as

14 (Pages 50 to 53)

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1 Mr. Gosselin suggested with his non-objection. What
2 I meant by that is do you have a practice about how
3 often you empty your e-mail mailbox, delete all
4 e-mail?
5 **A. I do not have a policy. If the numbers get**
6 **high enough and it looks like it's choking the**
7 **system, you know, then we will dump them.**
8 Q. And when you dump them do you print out the
9 e-mails that are on --
10 **A. No, sir.**
11 Q. If there is an e-mail that relates to your
12 service as a School Board member, or consideration
13 of School Board issues do you print that e-mail and
14 keep it in your files?
15 **A. No, sir.**
16 Q. So, let me ask you a general question about
17 e-mails, is it the fact that you believe that there
18 are no e-mails on your various computers, whether in
19 the office or at home, that relate to the issues in
20 this lawsuit?
21 **A. I don't think so.**
22 Q. You haven't looked but you don't think
23 there are?
24 **A. No, sir. We've switched computers several**

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1 times in the intervening time period. I live in an
2 electrically challenged area which means that where
3 we are the power can go down on a regular basis, and
4 even though we use uninterrupted power supplies,
5 there was a time period where we replaced hard
6 drives on a fairly regular basis, all right, and I
7 backup the things that I consider to be important
8 which is my financial information, my patient
9 records, some pictures but that's about the total of
10 what I back up.
11 Q. And when you backup do you keep a copy of
12 the disk -- do you backup to floppies or to optical
13 disks or optical --
14 **A. Optical disks at this point. With the**
15 **financial information we now use and off line**
16 **storage.**
17 Q. And when you backup do you discard the
18 previous back up?
19 **A. I'm not that organized.**
20 Q. Do you use a fax machine either at home or
21 at work?
22 **A. At work.**
23 Q. Have you ever sent or received any faxes
24 about School Board meetings or matters discussed

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1 therein?
2 **A. Yes, sir.**
3 Q. Did you keep those faxes?
4 **A. No, sir.**
5 Q. Do you have a practice of discarding
6 matters relating to the School Board?
7 **A. As I stated earlier we get a lot of**
8 **material that comes in, we take a look at it,**
9 **basically if there is a date that I need to know**
10 **about I enter it either into the daytimer or the**
11 **electronic daytimer and pretty much pitch it.**
12 Q. Do you have a file either at home or at the
13 office relating to your service as a School Board
14 member?
15 **A. Yes, I do.**
16 Q. At the office or at home?
17 **A. Home.**
18 Q. Where did you keep it?
19 **A. In a pile next to my desk rather like you**
20 **did when you threw your papers behind the chair.**
21 Q. Well, it's good that everybody is as
22 disorganized as I am.
23 **A. There you go.**
24 Q. What do you put in that file?

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1 **A. I keep the minutes of the various**
2 **committees and meetings that I go to. I keep the**
3 **material that would relate to student improvement to**
4 **grades, to numbers breakdowns in the schools, what**
5 **units we are entitled to, what units we are not**
6 **entitled to, pay scales. Things that I would**
7 **consider have a direct bearing on my School Board**
8 **function. The rest of it we shred.**
9 Q. We shred, I shred?
10 **A. I shred, yes, sir.**
11 Q. And that's been your practice from the
12 start of your service as a Board member?
13 **A. Originally I started keeping the entire**
14 **Board packet which had everything in it, until the**
15 **pile reached about ye high, and at that particular**
16 **point I figured I had to do something different and**
17 **that was within the first two years, after which we**
18 **sat down on the floor one Christmas holiday, we in**
19 **this case being my wife and I, she had the trash**
20 **can, I basically sorted, I put it one pile she**
21 **pitched in the trash can.**
22 Q. Is it correct that everything that's in
23 your the Board file comes from the Board package,
24 comes from the Board packages, it's a subset of the

15 (Pages 54 to 57)

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1 Board packages?
2 **A. The Board packages and committee meetings.**
3 Q. You said that earlier, I'm sorry. Is there
4 anything else in your Board file other than a subset
5 of the Board package and the committee meeting
6 minutes?
7 **A. I do have some of the legal documents and**
8 **subpoenas that were served. I'm going to assume**
9 **that I have all of them that were served to me, to**
10 **the best of my knowledge.**
11 Q. Do you have memos received from anyone
12 relating to your services as a School Board member?
13 **A. No, sir, other than what came in the Board**
14 **packages. A lot of those things come across as**
15 **faxes and as I stated earlier I read them, note**
16 **them, and they go out.**
17 Q. Do you keep copies of media, newspaper
18 clippings, web postings, the like about the issues
19 in this case?
20 **A. I stopped that a long time ago.**
21 Q. How long ago?
22 **A. About two years. I got tired of seeing my**
23 **name in print.**
24 Q. Well, about two years would be October of

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1 2004, can you be a little more accurate than that?
2 **A. That's roughly the time period. Things**
3 **were showing up in print too much and while I like**
4 **advertising, and you know it's like P.T. Barnum**
5 **said, you know, any mention is a good mention. But**
6 **personally I don't believe that I just simply. As a**
7 **matter of fact to a large degree I have stopped**
8 **reading the editorials as well. I just don't save**
9 **those things anymore.**
10 Q. And you stopped reading the editorials?
11 **A. Yup.**
12 Q. Is that because you are confident that what
13 they have to say is not going to be different from
14 what you have already formulated as to your view of
15 the consensus of your constituents?
16 **A. So far what I have seen appears to be**
17 **rehash of what has been rehashed for the last two**
18 **years. Different name, in some cases same names. I**
19 **just as a rule don't do it anymore.**
20 Q. Do you keep copies of correspondence
21 related to this case?
22 **A. In what sense?**
23 Q. If you get a letter from somebody that
24 relates to this case do you keep it, a copy of it?

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1 **A. No, sir.**
2 Q. Have you ever been instructed to retain all
3 documents relating to the issues in this litigation?
4 **A. Yes, sir.**
5 Q. When was that?
6 **A. Earlier this year.**
7 Q. That was from Mr. Gosselin?
8 **A. It was from somebody.**
9 Q. And since then have you retained everything
10 that you've received in connection with this case?
11 **A. Yes.**
12 Q. Where do you keep that in a separate file?
13 **A. No, it's still in the pile on the floor.**
14 Q. Do you take notes at School Board or
15 committee meetings?
16 **A. Yes, I do.**
17 Q. And do you keep those notes?
18 **A. What I do is I keep the notes and compare**
19 **them with the minutes and then I pitch them, my**
20 **originals, I keep the printed notes.**
21 Q. And since the instruction from Mr. Gosselin
22 or his firm to keep matters, keep documents related
23 to this litigation have you kept your notes?
24 **A. I haven't kept any notes on the litigation**

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1 **since then.**
2 Q. So, you've continued with your practice of
3 throwing away the notes after you review them in
4 connection with your review of the minutes?
5 **A. Again, I have not kept any notes regarding**
6 **the litigation. Most of the notes that I do take**
7 **would relate to the heat is not working in this**
8 **building, we have a leak in this building, here is a**
9 **grant that came through properly. Those things**
10 **would show back up in the printed notes and there**
11 **would be no reason to keep them in a separate note**
12 **area.**
13 Q. Well, whether there is a reason to or not,
14 Dr. Hattier, if you did take a note related to the
15 issues in this litigation?
16 **A. Right.**
17 Q. Since, the instruction to retain all
18 documents relating to this litigation?
19 **A. Right.**
20 Q. And I recognize that you are confident
21 there is no such note, I can from my point of view
22 say whatever notes you took, whatever they contain
23 you discarded them?
24 **A. I believe though, sir, you are making the**

16 (Pages 58 to 61)

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1 **allegation that I have may have taken notes**
2 **regarding this and pitched them and I don't believe**
3 **that I've taken any notes in that regard.**
4 Q. No, sir, I wasn't trying to make any
5 allegation, I was simply trying to establish that
6 all notes that you've taken at Board and committee
7 meetings since the time that you received the
8 admonition to retain certain documents --
9 **A. Relating to this litigation, correct.**
10 Q. All notes that you've taken since that time
11 of Board or committee meetings you have tossed?
12 **A. Yes.**
13 Q. In accordance with your practice?
14 **A. Yes.**
15 Q. Okay, that's all I'm trying to get at?
16 **A. Okay.**
17 Q. Did the Board consider itself under the
18 threat of litigation in August of 2004, and I can
19 pinpoint that time for you if you like?
20 **A. That's all right. I believe that we**
21 **considered the possibility of it.**
22 Q. Why was that?
23 **A. Statements that were made by Mrs. Dobrich**
24 **at that time period. She had indicated that she**

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1 **would probably talk to the ADF at that particular**
2 **time is what I had heard and that being the**
3 **Anti-defamation League as opposed to the Alliance**
4 **Defense Fund, so we did consider that there was a**
5 **possibility.**
6 Q. What's the Alliance Defense Fund?
7 **A. The Alliance Defense Fund would be a**
8 **Christian group in favor of family values, First**
9 **Amendment issues, what I would classify as more**
10 **traditional American values.**
11 Q. It's in favor of more traditional American
12 values and First Amendment issues?
13 **A. Yes, sir. Religious freedom is**
14 **specifically the way they phrase it on their web**
15 **site.**
16 Q. And how did you become to be familiar with
17 the ADF?
18 **A. The same way I was familiar with the ACLU,**
19 **in what I read in news, what I read on the web**
20 **sites, and you would see a lot of times where the**
21 **ACLU was suing somebody where the ADF along with**
22 **Rutherford, Pacifica and others would come in.**
23 **Whatever side the ACLU was on the ADF, Pacifica,**
24 **Rutherford and some of the others would be on the**

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1 **other side.**
2 Q. Sounds like the ACLU is out numbered.
3 **A. I --**
4 Q. That's not a question, I'm sorry.
5 **A. Correct.**
6 Q. Did you ever have any conversations with
7 the ADF about this lawsuit or representatives of the
8 ADF?
9 MR. GOSSELIN: Objection, don't
10 answer that.
11 MR. ALLINGHAM: On what ground?
12 MR. GOSSELIN: Your --
13 attorney/client privilege.
14 Q. Did the Alliance Defense Fund ever
15 represent the district or your personally in this
16 litigation?
17 **A. Not to my knowledge.**
18 Q. Have you ever had a conversation with the
19 ADF relating to this litigation?
20 **A. I did e-mail them at one point, there might**
21 **have been a phone call.**
22 Q. When did that take place?
23 **A. On or about August of 2004.**
24 Q. And whom did you contact?

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1 **A. Whatever their 800 number happened to be.**
2 Q. And who did you speak to?
3 **A. Whoever happened to answer the telephone.**
4 Q. Did you thereafter correspond either
5 personally or as a member of the Board with
6 representatives of the ADF?
7 **A. No.**
8 Q. Were you aware that the ADF represented
9 that it represented the district in connection with
10 this litigation?
11 **A. I believe there was a time period where the**
12 **ADF was going to become involved with us, and then**
13 **for a variety of reasons was unable to do so.**
14 Q. When did you conclude that for a variety of
15 reasons the ADF would be unable to represent the
16 district in this litigation?
17 **A. Some time in late summer of 2004.**
18 Q. Late summer being August, September?
19 **A. October, possibly early fall.**
20 Q. And you let the ADF know that they would be
21 representing you or did they say to you we can't
22 represent you?
23 **A. At that particular point as an individual**
24 **Board member I had stepped out of it. It was**

17 (Pages 62 to 65)

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1 **whatever the district, I believe the district**
2 **handled it at that point. I had nothing to do with**
3 **that.**
4 Q. Okay, so let me just see if I can get the
5 sequence of events down. The Board perceives that
6 there is the possibility of litigation in August of
7 2004, correct?
8 **A. Correct.**
9 Q. In August of 204 you initiate a contact
10 with the Alliance Defense Fund?
11 **A. Yes.**
12 Q. Over the course of August, September maybe
13 October of 2004 there are discussions with
14 representatives of the Alliance Defense Fund having
15 to do with whether it would represent the district
16 in connection with --
17 **A. Correct.**
18 Q. With threatened litigation?
19 **A. I'm going assume yes.**
20 Q. And did you have any of those
21 conversations?
22 **A. No.**
23 Q. Who did?
24 **A. Somebody at the School Board, excuse me,**

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1 **somebody at the district level who coordinated this,**
2 **but it was not me.**
3 Q. Well, this is helpful to me because I guess
4 I misunderstood the chains of command. When you I
5 say someone at the district level, do you know who
6 at the district level?
7 **A. No.**
8 Q. Can you give me the possibilities of the
9 persons who could have been --
10 **A. Lois Hobbs. The materials that were sent**
11 **to me were fairly generic in nature and there were**
12 **things that I presented to my fellow Board members,**
13 **they were in turn passed to Mrs. Hobbs. And Mrs.**
14 **Hobbs would have reviewed them and in conjunction,**
15 **I'm assuming our attorney at the time, and with the**
16 **broader policy of defense would have looked at it**
17 **and I know there was some correspondence relating to**
18 **this but I can't give you the specific disposition**
19 **of it, no.**
20 Q. Correspondence relating to the question of
21 whether ADF would represent the district?
22 **A. The correspondence that I was looking at**
23 **was the correspondence of the materials pertaining**
24 **to the appropriateness of prayer --**

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1 **MR. GOSSELIN: Objection.**
2 **objection, stop answering the question. If**
3 **you ant to ask if they made inquires to the**
4 **ADF I have no objection to that, but you**
5 **are asking questions that are beginning to**
6 **elicit the substance of what those**
7 **communications were and I'm generally**
8 **instructing him, the witness, not to give**
9 **answers even if your question didn't**
10 **directly ask for the substance of the**
11 **communications.**
12 **MR. ALLINGHAM: On what basis?**
13 **MR. GOSSELIN: Attorney/client**
14 **privilege.**
15 **MR. ALLINGHAM: The witness has**
16 **just testified that the ADF did not**
17 **represent the district in connection with**
18 **this litigation.**
19 **MR. GOSSELIN: If the defendants**
20 **had communications with the ADF for the**
21 **purpose of possibly retaining the ADF to**
22 **represent them, those communications are**
23 **protected.**
24 **MR. ALLINGHAM: As Vince Vaughn**

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1 **said in Wedding Crashers, erroneous, but we**
2 **will just have to fight about that later.**
3 **MR. GOSSELIN: Okay.**
4 Q. So that we have the factual predicate
5 clear, the district never retained the ADF to
6 represent it, is that correct?
7 **MR. GOSSELIN: Objection.**
8 **MR. ALLINGHAM: No, I'm entitled**
9 **to the factual predicate, Jason.**
10 **MR. GOSSELIN: I don't want to**
11 **have a speaking objection. If you want me**
12 **to talk to you outside of the presence of**
13 **the witness I'm happy to do that.**
14 **MR. ALLINGHAM: Nope, I want to**
15 **get an answer to my question.**
16 **MR. GOSSELIN: Can you**
17 **kindly read back the question.**
18 Q. Oh, I will move things along and I will
19 just pose the question again, sorry. Has the Board
20 ever retained the ADF as its counsel?
21 **A. Not do my knowledge.**
22 Q. You referred in an answer that was cut off
23 by Mr. Gosselin earlier to correspondence that you
24 reviewed that had to do with, and then you were cut

18 (Pages 66 to 69)

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1 off, what is it that that correspondence had to do
2 with?
3 MR. GOSSELIN: Objection, don't
4 answer that. Next question.
5 MR. ALLINGHAM: On the basis of?
6 MR. GOSSELIN: What we talked
7 about before.
8 MR. ALLINGHAM: Attorney/client
9 privilege?
10 MR. GOSSELIN: Yes.
11 MR. ALLINGHAM: Not withstanding
12 the witness' recent answer?
13 MR. GOSSELIN: Do you want me to
14 say it again? If the Board or Board
15 members had communications with the ADF
16 about the possibility of retaining them,
17 and for some reason they ultimately did not
18 end up retaining the Board, the protection
19 applies. If I'm wrong and you can, you've
20 got other than your say so, if you've got
21 something that tells me I'm wrong I will
22 reconsider it and we can deal with this
23 line of questions while Dr. Hattier is
24 here. If you have got another Vince Vaughn

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1 that supports your erroneous statement,
2 I'm happy to listen to it.
3 MR. ALLINGHAM: I'm not going to
4 argue the legal issue now. I don't think
5 that you are correct.
6 Q. Is it correct, Dr. Hattier that you did
7 review correspondence from the ADF relating to
8 issues in this lawsuit, yes or no?
9 A. Yes.
10 Q. And was that correspondence reviewed by the
11 Board as well?
12 A. I'm going to say I passed it on. I made
13 photocopies of the materials and passed it on to the
14 other Board members.
15 Q. How did you do that by fax or by hand?
16 A. Hand.
17 Q. That was at a Board meeting?
18 A. Yes, sir.
19 Q. Do you know which Board meeting?
20 A. Again on or about August of 2004.
21 Q. I can identify some meetings for you so
22 that we get some bench marks. On August 24th there
23 was a meeting at which many hundreds of people
24 attended, that was August 24?

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1 A. Okay.
2 Q. Did you provide the ADF correspondence or
3 materials to your fellow Board members before or
4 after that August 24th meeting?
5 A. My recollection would be that it would be
6 at that meeting and latest the meeting following.
7 Q. And did you consider the ADF material, this
8 is you personally, Dr. Hattier in connection with
9 your decision whether to adopt the School Board
10 Prayer Policy?
11 A. Nope.
12 Q. You gave no consideration to those
13 materials?
14 A. No.
15 Q. Is that because you thought that they were
16 not relevant?
17 A. No.
18 Q. Why did you give no consideration to them
19 having solicited the materials from the ADF?
20 A. Because the issues at that time had started
21 to stray from some of the things that the ADF had
22 sent us, and at the time we were looking at the
23 Board Prayer Policy itself. There was a other
24 material that I had looked at that I felt was more

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1 relevant.
2 Q. Oh, okay, what was that material?
3 A. That material had been presented to us by a
4 Mr. Thomas Neuberger.
5 Q. In your earlier answer you referred to
6 Mr. Neuberger's material as more relevant than the
7 ADF material?
8 A. That's correct.
9 Q. It might just be nuance of speech, but does
10 that mean that you considered the ADF materials
11 relevant?
12 A. No, I think the ADF material at that time
13 was substantively different. I watch my words
14 because I realize as an attorney you use words
15 slightly different than I would as a member of the
16 general public. As I stated, I believe that the
17 issue had strayed somewhat from what the ADF had
18 given us at that time. You know, a lot of the
19 things that they had were not dealing with the
20 prayer issue itself before School Board meeting.
21 Q. Did you get one packet of materials from
22 the ADF?
23 A. As I recall, yes, sir.
24 MR. ALLINGHAM: Let's mark as

19 (Pages 70 to 73)

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1 Hattier Exhibit 2 a document bearing Bates
2 numbers BPD640 through 642.
3 (WHEREUPON, Hattier Exhibit 2 was
4 marked for identification)
5 Q. What we have now marked as Hattier Exhibit
6 2, is that the package of materials from the ADF
7 that you referred to in your earlier answers?
8 A. No.
9 Q. This one is dated April 1, 2004. Am I
10 correct that you got a subsequent package of
11 materials some time in the August time frame?
12 A. All I can recall is it was a different
13 package of material. I have seen this document
14 before.
15 Q. I'm going to ask you about that in a
16 minute. I'm just trying to get the sequence of
17 events.
18 A. Understood.
19 Q. I don't for purposes of this question want
20 you to tell me what was in that subsequent package
21 from the ADF, but can you tell me generically what
22 it was. Was it legal memoranda, was it copies of
23 cases, was it correspondence from representatives of
24 the ADF, or was it something else? Can you describe

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1 for me generically what was included in that ADF
2 package?
3 A. What I recall of the, and you are using the
4 word subsequent, this to me would be the subsequent.
5 Okay, this would be the one that would follow what I
6 got from them. This was not the original
7 information that I got from them.
8 Q. So, this came after the package that you
9 got from the ADF?
10 A. Yes.
11 Q. This is April 1, 2004?
12 A. Correct.
13 Q. The meeting with lots of people at it was
14 August 24, 2004?
15 A. Correct.
16 Q. So, you contacted the ADF some time before
17 April 1, 2004?
18 A. Correct. No, no back up. No restate your
19 question please, I'm jumping to conclusions and I
20 apologize.
21 Q. I may just have misunderstood.
22 A. I may have as well, sir.
23 Q. We have Hattier Exhibit 2 which is dated
24 April 1, 2004?

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1 A. Correct.
2 Q. And a couple of answers ago you told me
3 that you would consider this April 1, 2004 Alliance
4 Defense Fund memo subsequent to the package that you
5 were discussing earlier?
6 A. Correct.
7 Q. So, am I correct that the package from the
8 ADF that you were discussing earlier was dated and
9 sent to you earlier than April 1, 2004?
10 A. No.
11 Q. Did you get Hattier Exhibit 2 on or about
12 April 1, 2004?
13 A. No.
14 Q. When did you receive Hattier Exhibit 2?
15 A. My recollection is the November to
16 Christmas time frame of 2004.
17 Q. If you look at the second page of Hattier
18 Exhibit 2, you will see that there is a fax line on
19 it August 23, 2004 1:08 p.m.?
20 A. Okay.
21 Q. Does that refresh your recollection about
22 when you received this memorandum?
23 A. No.
24 Q. You are confident that it was in the

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1 November December time frame?
2 A. That is what I recall, yes, sir.
3 Q. What enables you to place your receipt of
4 this memorandum in that time frame?
5 A. Because what I recall is that we had
6 another issue come up of some type, and for some
7 reason this came across my fax line. That's as much
8 as I can tell you, I don't remember.
9 Q. What was the issue that came up?
10 A. I don't even remember that. I just
11 remember that this is one of the things that came
12 across around that time period.
13 Q. You don't know who sent it to you?
14 A. My guess is that it came from the ADF.
15 Q. So, the ADF was still in contact were you
16 in the November December time frame?
17 A. I'm assuming that's where it came from,
18 that is an assumption, however.
19 Q. And that was after the final decision had
20 be made not to retain the ADF in September or
21 October, correct?
22 A. I believe so. I can't answer that 100
23 percent, though.
24 MR. ALLINGHAM: One more time with

20 (Pages 74 to 77)

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1 that predicate, Jason, will you permit the
2 witness to answer questions about the
3 substance of that package.
4 MR. GOSSELIN: Can you give me a
5 moment to talk --
6 MR. ALLINGHAM: Sure.
7 MR. GOSSELIN: To try to flesh
8 this out privately?
9 MR. ALLINGHAM: Sure, and so that
10 we are on the record about this,
11 Mr. Gosselin wants to talk to you I think
12 about some timing. You are under Delaware
13 rules prohibited from discussing the
14 substance of your testimony other than as
15 we've discussed to figure out timing here.
16 You can have that discussion but I'm
17 entitled to ask about it under the Delaware
18 rules. So, either discuss the timing and
19 that's all I will ask you about or --
20 MR. GOSSELIN: What Delaware rule
21 applies here that would prohibit me from
22 having an attorney/client protected
23 discussion about whether the question you
24 are about to ask is protected by the

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1 attorney/client privilege?
2 MR. ALLINGHAM: None, if that's
3 what you want to ask about you are entitled
4 to ask that.
5 MR. GOSSELIN: That's all I want
6 to do. I want to flesh this out privately
7 so I can decide whether to maintain the
8 objection.
9 MR. ALLINGHAM: Let's go off the
10 record for, whatever it takes.
11 MR. GOSSELIN: A minute.
12 MS. DUPHILY: We are going off the
13 record at 11:16 a.m..
14 (WHEREUPON an off-the-record
15 discussion was held)
16 MS. DUPHILY: We are back on the
17 record at approximately 11:26 a.m..
18 Q. With some help from Mr. Gosselin on
19 clarifying his position, I have a few more questions
20 on this ADF issue. I'm going to, we have Hattier
21 Exhibit 2 which we've established you received in
22 November, December of 2004?
23 **A. Or thereabouts, yes sir.**
24 Q. You also received a package from the ADF in

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1 the August 2004 time frame, correct?
2 **A. Yes, sir.**
3 Q. Do you know what that package addressed?
4 **A. As I recall that was a general discussion**
5 **of the Supreme Court cases that would have had a**
6 **bearing on it.**
7 Q. On it being what?
8 **A. On it being the issue that had been**
9 **presented to the School Board and at that time the**
10 **major issue was prayer at graduations. And the**
11 **materials that I got back, there are three specific**
12 **things that I remember, Lee versus Weitzman, Santa**
13 **Fe and Marsh versus Chambers. And there were very**
14 **general discussions of that material which again I**
15 **made copies of and passed to the other School Board**
16 **members.**
17 Q. Okay, so here is the sequence, you perceive
18 there to be a danger of litigation on the issue
19 having to do with graduation prayer?
20 **A. Yes.**
21 Q. You call the ADF or e-mail them one or the
22 other, contact the ADF?
23 **A. Correct.**
24 Q. And speak to someone there who says well

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1 why don't we send you some materials?
2 **A. Yes.**
3 Q. And then they send you some materials?
4 **A. Yes.**
5 Q. Which constituted three cases and a
6 discussion of those cases?
7 **A. Essentially that is what I recall, yes.**
8 Q. Okay, and do you have a copy of that
9 package still in your file?
10 **A. No, sir.**
11 Q. What did you do with it?
12 **A. Pitched it same as I do most things.**
13 Q. Was that package considered -- distributed
14 to Board members?
15 **A. It was distributed to the Board members, I**
16 **made copies of it at my expense to that they would**
17 **have some better understanding of what, again I'm**
18 **not an attorney, let us be clear about that, but as**
19 **a lay person what I understand.**
20 Q. And did you simply distribute the ADF
21 package or did you provide a summary of it as you
22 understood it?
23 **A. No, sir I simply provided the package.**
24 Q. And did you thereafter have any further

21 (Pages 78 to 81)

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1 conversations with ADF representatives?
2 **A. Not that I can recall.**
3 Q. E-mail correspondence?
4 **A. Not that I can recall.**
5 Q. And I take it that you have no light to
6 shed on why an ADF representative would have said
7 that he represented the Indian River School District
8 in connection with this litigation?
9 **A. As I understand it the ADF had expressed a**
10 **willingness to work with us, but that they were not**
11 **able to find a Delaware based attorney that could**
12 **work with us. That's as I understand it issue. I**
13 **think the closest they came was Kentucky, and don't**
14 **ask me why that sticks in my memory.**
15 Q. I thought that's where they were, but I
16 might be wrong. Okay, I've asked you questions
17 about your communications with ADF representatives.
18 Do you know of your own knowledge whether there were
19 any communications following the receipt of the
20 August package, let's call it, between any
21 representative of the district and any
22 representative of the Alliance Defense Fund?
23 **A. I believe that there were.**
24 Q. Written communications or telephone

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1 conversations?
2 **A. I'm making an assumption her but I believe**
3 **that there were both.**
4 Q. And I think we have been over this already,
5 your best guess is that it would be Miss Hobbs who
6 had those conversations or those communications?
7 **A. Yes, sir.**
8 Q. Now, in describing the Alliance Defense
9 Fund you told me earlier that you view them as being
10 allied with more traditional American values, do you
11 recall that?
12 **A. Yes, sir.**
13 Q. What do you mean by that?
14 **A. That's a good question. I see them as**
15 **supporting more of what, certainly what I grew up**
16 **with as a young person in the 1950s, and just**
17 **supporting more of a family unity, more traditional**
18 **marriage, more traditional child rearing, the First**
19 **Amendment I think there are probably more in favor**
20 **of things like prayer at legislative sessions, board**
21 **meetings opening with things like that.**
22 Q. Do you view opening the School Board
23 meetings with a prayer as consistent with
24 traditional American values as you understand them?

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1 **A. Yes, sir.**
2 Q. Do you view prayer in school during the
3 schools, during the school day as consistent with
4 traditional American values?
5 **A. If you are a student taking a test, yes**
6 **sir.**
7 Q. Do you view district or teacher sponsored
8 or led prayer in school as consistent with
9 traditional American values.
10 MR. GOSSELIN: Objection, don't
11 answer that.
12 MR. ALLINGHAM: Attorney/client
13 privilege?
14 MR. GOSSELIN: No. You can try to
15 bring in the rest of the issues in the case
16 every time we have one of these go off on a
17 tangent --
18 MR. ALLINGHAM: Relevance or
19 privilege?
20 MR. GOSSELIN: The court order.
21 MR. ALLINGHAM: Relevance?
22 MR. GOSSELIN: Well, no, the court
23 order, there is a court order describing
24 what the topics of discover can be in this

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1 phase of the litigation.
2 Q. Did the district ever retain Mr. Neuberger
3 to be its attorney?
4 **A. No, sir.**
5 Q. Did the district ever retain the Rutherford
6 Institute to be it's attorney?
7 **A. No, sir.**
8 Q. Did the Board ever, Board of the district
9 ever consider retaining either Mr. Neuberger or the
10 Rutherford Institute as its attorney?
11 **A. Yes, sir.**
12 Q. When was that?
13 **A. Again time frame on or about September,**
14 **October of 2004. Possibly as late as November.**
15 Q. And I take it the decision was made not to
16 retain Mr. Neuberger and the Rutherford Institute?
17 **A. No, sir.**
18 Q. Tell me how it came to be that they did not
19 represent you?
20 **A. Mr. Neuberger chose not to represent us.**
21 Q. Did he tell you why?
22 **A. Yes, sir.**
23 Q. What did he say?
24 **A. He felt that we were not a unified body --**

22 (Pages 82 to 85)

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1 well let me back up. Mr. Neuberger came and spoke
2 to us one evening about all of this. He came
3 extremely well prepared. He came prepared with what
4 I considered to be a lot of precedents and other
5 material. A lot of discussions on the issue, and he
6 gave us some good information. He essentially gave
7 us the choice of accepting him or rejecting him that
8 evenings.
9 Now, in my family my father and mother
10 always taught me that is somebody puts it to you
11 that way that basically you probably want to walk
12 away from it for at least 24 hours. I don't buy
13 anything on the spot. I walk away from it, I will
14 think about it for 24 hours, if it's a good deal we
15 will come back to it. That apparently in my opinion
16 offended Mr. Neuberger and by the following day he
17 had withdrawn his offer. This is as I understand
18 it.
19 Q. Seems a little imperious.
20 MR. GOSSELIN: Objection.
21 A. No comment.
22 Q. You mentioned that Mr. Neuberger came very
23 well prepared, did he bring a package of materials?
24 A. Yes, he did.

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1 Q. Were the distributed to the Board?
2 A. Yes, they were.
3 Q. Do you still a copy of those materials that
4 he distributed?
5 A. No, sir.
6 Q. We talked about the Board's consideration
7 of retaining the Alliance Defense Fund or the
8 Rutherford Institute. The Board had an attorney at
9 that time for regular Board matters, is that
10 correct?
11 A. Yes, sir.
12 Q. Who was that?
13 A. That was Mr. Jim Griffin.
14 Q. And did the Board consult Mr. Griffin on
15 the issues presented by this lawsuit?
16 A. Yes, the Board did.
17 Q. But ultimately decided not to use
18 Mr. Griffin for this purpose?
19 A. That is correct.
20 Q. Why was that?
21 A. I think the general feeling was that we are
22 dealing with First Amendment constitutional law and
23 Mr. Griffin is a general attorney and much like you
24 would not see me for low back surgery, the idea was

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1 to speak to somebody who was more qualified or
2 competent in that particular area of law.
3 Q. So, I take it you didn't ask Mr. Griffin
4 for advise on this litigation?
5 A. We asked his opinion.
6 Q. What did he tell you?
7 MR. GOSSELIN: Objection, don't
8 answer that.
9 Q. Did Mr. Griffin distribute any materials to
10 the Board on this issue?
11 A. I believe that he did send a memorandum of
12 sorts to Mrs. Hobbs which was photocopied to us.
13 Q. But I think you discarded your copy?
14 A. Absolutely.
15 Q. I don't want you to tell me what it was,
16 but do you recall the substance of the advise that
17 Mr. Griffin gave the Board?
18 A. Yes.
19 Q. I apologize, I'm just making a record, Mr.
20 Gosselin is going to object. What was the substance
21 of the advice that Mr. Griffin gave the Board on the
22 issues presented by this lawsuit?
23 MR. GOSSELIN: Objection,
24 don't answer that. Is there a good faith

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1 basis for asking a question, asking a
2 witness what the attorney told him in
3 connection with issues that are in the
4 lawsuit? I'm not aware of any case that
5 says you can ask --
6 MR. ALLINGHAM: Sure, sure --
7 MR. GOSSELIN: What?
8 MR. ALLINGHAM: If the lawyer did
9 not represent the district in connection
10 with the advice given I think that, you
11 know, if Dr. Hattier called me and said hey
12 what do you think about School Board prayer
13 and I said you know here is what I think, I
14 don't think that's a privileged
15 communication.
16 MR. GOSSELIN: But other than,
17 like I said before your say so, because I'm
18 not trying to be cute here, if I've got
19 this wrong I will reconsider my objection,
20 but if you've got it wrong I don't think
21 you should continue to be asking the same
22 questions that directly implicate
23 attorney/client privilege.
24 MR. ALLINGHAM: Well I don't think

23 (Pages 86 to 89)

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1 there is any danger here since you are
2 asserting the privilege and the issue will
3 be teed up with respect to each piece of
4 legal advice that we need to tee up. I
5 mean it's time consuming to the extent that
6 it takes five or ten minutes, but it
7 requires a record in order to bring a
8 motion to compel.

9 So, I don't think there is any
10 harm, the witness is not going to testify,
11 you are going to instruct. But the answer
12 is I do believe there is a good faith basis
13 for taking for advice given by a person who
14 has not been retained.

15 MR. GOSSELIN: Okay. One of the
16 things, as long as we are still talking
17 about this, I called one of my colleagues
18 on the break and asked him to get me a cite
19 and he just e-mailed me a cite, Bevel
20 Bressler & Schulman 3rd Circuit 805(f) 2nd
21 120 page 124, and the quoted language that
22 my colleague just e-mailed me is that the
23 attorney/client privilege protects
24 conversations between prospective clients

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1 and counsel as well as communications which
2 retain counsel.

3 Like I said before if I'm wrong
4 and I don't intend to have a oral argument
5 with you right here, but I think that every
6 single time that this comes up for to you
7 ask a series of six questions and for me
8 to instruct him not to answer is wasting a
9 lot of time. I would rather just get the
10 judge on the phone right now and get a
11 ruling so that we don't all have to come
12 back here if I am wrong and we don't have
13 to stay here all day if you are wrong.

14 MR. ALLINGHAM: With respect,
15 Jason I don't think that we are going to
16 stay here all day because of sequence of
17 questions that I'm going to ask. I believe
18 I've now exhausted all the lawyers.

19 Although I might be wrong, that the Board
20 consulted on these issues, so we have the
21 record that we are required to have, and we
22 can evaluate our respective positions. I'm
23 not going to have an oral argument either
24 and I'm not going to provide you or call

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1 someone to get cases on the other side.

2 MR. GOSSELIN: All of your people are
3 here, who could you call?

4 MR. ALLINGHAM: Oh.

5 Q. Just to clarify the timing of the advice
6 from Mr. Griffin, there is an assertion of privilege
7 with respect to a document, that means that your
8 lawyers have declined to produce to us a document
9 having to do with advice from Mr. Griffin on a day
10 of prayer. Do you recall a discussion about a day
11 of prayer at the Board meeting?

12 MR. GOSSELIN: Objection, don't
13 answer that.

14 MR. ALLINGHAM: I just want to
15 establish Jason whether it's a different
16 document, that's all. It will take about
17 30 seconds. I'm not asking what the
18 discussion was.

19 Q. I just want to know there is a document
20 that's been identified by your lawyers as having to
21 do as representing Mr. Griffin's advice on a day of
22 prayer in the Indian River Schools. Do you recall a
23 document different from that that Mr. Griffin
24 provided to the Board having to do with advice on

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1 the issues presented in this litigation?

2 MR. GOSSELIN: Objection. I don't
3 know whether, it's not an instruction not
4 to answer. Form, I'm a little unclear. I
5 don't know that he has established that he
6 recalls the document you are referring to.

7 MR. ALLINGHAM: That's fair. Let
8 me do it one step at a time.

9 Q. On the privilege list provided by your
10 lawyers there is identified a document that relates
11 to advice from Mr. Griffin or his firm on the issue
12 of a day of prayer in the Indian River School
13 District. So, by way of background do you recall
14 any discussion at the Board level of a day of prayer
15 at the Indian River School District schools?

16 **A. No, I do not.**

17 MR. ALLINGHAM: All right, well
18 then I agree I don't think I can establish
19 anymore.

20 Q. This goes back to some questions I asked
21 earlier. You told me that you had looked up prayers
22 that Congress had used to solemnize its sessions on
23 the Internet?

24 **A. Yes.**

24 (Pages 90 to 93)

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1 Q. Do you recall that?
2 A. Yes.
3 Q. Am I correct that those prayers are then
4 prayers from recent years, as I understand that they
5 maintain those prayers only for a period of four or
6 five years going backward?
7 A. When you look up prayer on the Internet,
8 there are a wide variety of sources to print things
9 and recall them. So whether this came from the
10 Congressional Archives or the Congressional Record I
11 don't recall. They would have come from a wide
12 variety of areas. In general when I do look up
13 prayers I will look up everything from President
14 George Bush's National Prayer Day comments or
15 opening comments at other things. I will look up
16 what George Washington may have said, Thomas
17 Jefferson, James Madison, Martin Luther King. I
18 generally reach to a wide variety of sources,
19 Congress merely being one of them.
20 Q. When you told me that the prayers that you
21 had reviewed that Congress had used to solemnize its
22 proceedings seemed to you to be effective ways to
23 solemnize the proceedings, do you recall whether the
24 prayers that you reviewed in forming that conclusion

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1 were sectarian or non-sectarian?
2 A. In the sense that whether they mention
3 Jesus Christ or not, no I do not. But I think you
4 could get some arguments with folks of different
5 religions as to whether sectarian if you mention God
6 would suit an individual of the Muslim faith where
7 it's Allah is not God, I believe they are probably
8 all sectarian. So I don't know that that's a good
9 question.
10 MR. ALLINGHAM: Well, many of my
11 questions suffer from that weakness. I'm
12 going to mark as, or ask to have marked as
13 Hattier Exhibit 3 a document which is a
14 letter from me to Nathan Kellum with copies
15 to Mr. Griffin, Miss Hobbs, Assistant
16 Superintendent Savage and each of the
17 Indian River School Board members.
18 (WHEREUPON Hattier Exhibit 3 was
19 marked for identification)
20 MR. GOSSELIN: Can I get a copy?
21 MR. ALLINGHAM: Yeah, I'm sorry.
22 MS. DUPHILY: We are going off the
23 record at 11:44 a.m..
24 (WHEREUPON a brief recess was

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1 taken)
2 MS. DUPHILY: Back on the record
3 at 11:46 a.m..
4 Q. Dr. Hattier, have you had a chance to look
5 at Hattier Exhibit 3?
6 A. Yes I have, sir.
7 Q. Did you receive a copy of that letter on or
8 about March 10, 2005?
9 A. Not that I recall.
10 Q. Did you alter your practice with respect to
11 document retention at any time between March 10,
12 2005 and the time earlier this year when you
13 testified earlier you received a letter?
14 A. No, sir.
15 Q. Having to do with document retention?
16 A. No, sir. Let me back up. If you're asking
17 did I preserve things related to the lawsuit in
18 terms of subpoenas, et cetera, we always save those,
19 okay but other than that I didn't really feel that I
20 had much that was worth retaining.
21 Q. Okay.
22 MR. GOSSELIN: Did you send this
23 to the — this is a letter to you to from
24 Nathan Kellum, I'm not even sure I know who

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1 Nathan Kellum is.
2 MR. ALLINGHAM: From me to Nathan
3 Kellum.
4 MR. GOSSELIN: Right, from you to
5 Nathan Kellum. Are you the one who
6 actually sent, it says cc James Griffin,
7 Superintendent Lois Hobbs, Assistant
8 Superintendent Earl Savage and Indian River
9 School Board members. Did you actually
10 copy those individuals?
11 MR. ALLINGHAM: I copied Griffin.
12 I believe that I copied the letter to the
13 School Board members but we would just have
14 to look at the receipts for that.
15 MR. GOSSELIN: Okay.
16 Q. I'm not going to mark this as an exhibit,
17 Dr. Hattier, I'm just going to show you a pleading
18 in the case which is called Plaintiff's First
19 Request for the Production of Documents from
20 Defendants Indian River School District and Indian
21 River School Board?
22 A. Okay.
23 Q. You can take as much time as you want to to
24 look at it, but you probably don't need to?

25 (Pages 94 to 97)

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1 **A. What's the date on this?**
2 Q. April 20, 2006 on the last page?
3 **A. Okay, thank you. Okay.**
4 Q. Have you ever seen that document before?
5 **A. I believe I did and it came as a request**
6 **for any information that we may or may not have had.**
7 Q. We being you?
8 **A. We being the Board in this particular case,**
9 **and me specific, yes, sir.**
10 Q. And I'm correct that you individually
11 searched your files to see whether you had anything
12 in response to that?
13 **A. Yes, sir I did.**
14 Q. And did you also search the hard drives of
15 your computers?
16 **A. I pretty much know that's on the hard**
17 **drives of my computers and there wasn't anything**
18 **there.**
19 Q. The answer then is no, but you are
20 confident that you wouldn't find anything if you did
21 search?
22 **A. Yes, sir.**
23 Q. Are you familiar with the Board's policy
24 entitled Procedure for Audio Tapes?

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1 **A. No, sir.**
2 Q. This is policy BDDG, at least on the
3 district's web site at least that's how it's
4 designated and I will show it to you?
5 **A. Okay.**
6 MR. ALLINGHAM: Let's mark this as
7 Hattier Exhibit 4.
8 (WHEREUPON Hattier Exhibit 4 was
9 marked for identification)
10 **A. Okay.**
11 Q. Does that refresh your recollection?
12 **A. Yes, sir.**
13 Q. Hattier Exhibit 4 reflects a policy of the
14 Board which reads, the purpose of audio tapes is to
15 assist the Board of Education secretary in creating
16 the minutes of the Board meetings, therefore, 60
17 calendar after the Board of Education has approved
18 such minutes the audio tapes may be destroyed. This
19 policy was adopted according to its, the lower left
20 hand adoption date on June 27, 2006?
21 **A. Uh-hum.**
22 Q. Is that accurate, is that when you adopted
23 the policy?
24 **A. If that's what it says, yes, sir.**

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1 Q. And what prompted the Board to consider and
2 adopt this policy?
3 **A. We started the process about a year to**
4 **approximately two years ago of putting all minutes**
5 **on the Internet, of putting all of our policies on**
6 **the Internet, that was actually ongoing even at the**
7 **time that all of this started in 2004 and we felt**
8 **that once it's on the Internet and once everything**
9 **is typed up, you know, that once it's all out there**
10 **already what's the purpose of saving the tapes.**
11 **Most of the thing that happen at School**
12 **Board meeting, if you have ever attended one, are**
13 **incredibly dry, incredibly lengthy and it's pretty**
14 **minutia. You know, if people want to sit around and**
15 **listen to it, I suppose they are welcome to. When I**
16 **ran for the Board the first in the year 2000 and it**
17 **was somewhat mind numbing and we felt that it was**
18 **probably okay to just put it out on the Internet.**
19 **We had had many requests from members of**
20 **the community in terms of full disclosure and**
21 **openness to put things on the net. I think you've**
22 **seen our policy manual, it's relatively thick, and a**
23 **piece at a time over a two year period we did put it**
24 **on the net, we put the minutes on the net so that**

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1 **folks could look at it without having to come down**
2 **to central office to get it. To me that was just a**
3 **continuation of that.**
4 Q. Well, first of all I have served on the
5 School Board?
6 **A. Good.**
7 Q. So I'm aware of the nature of the topics
8 discussed at School Board meetings. And secondly
9 that the minutes are available on the web in more
10 convenient form than for someone to have to come
11 down to the district offices and get the hard copy,
12 doesn't really address, does it, why you thought you
13 needed a policy permitting the destruction of the
14 tapes which are different from the minutes?
15 **A. I can't comment on that.**
16 Q. Did you have any other reason for
17 destroying the tapes?
18 **A. As I stated we have a ton of material and I**
19 **believe that it was simply to help reduce some of**
20 **the storage and get it all on electronic media.**
21 **That's my opinion.**
22 Q. the tapes of course are the most accurate
23 record of what occurred at a Board meeting, is that
24 correct?

26 (Pages 98 to 101)

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1 **A. That would be my assumption as well.**
2 Q. Do you know when this policy was first read
3 to the Board?
4 **A. If it's according to standard policy**
5 **approximately either two to three months prior, so**
6 **March is when it would have first come up, more than**
7 **likely.**
8 Q. Was there any reason for this particular
9 policy to be adopted on a more expedited basis than
10 that?
11 **A. I'm not aware that it was on a more**
12 **expedited basis.**
13 MR. ALLINGHAM: Let's mark as
14 Hattier Exhibit 5 a copy of the Board
15 minutes of June 20, 2006.
16 (WHEREUPON Hattier Exhibit 5 was
17 marked for identification.)
18 Q. Hattier Exhibit 5 bears Ms. Hobbs signature
19 on page PR448, it's the tenth page of the minutes,
20 do you see that?
21 **A. Yes, I do in.**
22 Q. And does that mean that this version of the
23 minutes is the final version of the minutes?
24 **A. Yes, sir.**

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1 Q. Okay, if you look on page six of the Board
2 minutes you will see that about two thirds of the
3 way down the page Mr. Walls is recorded as having
4 presented policy BDDG audio tape retention for a
5 first reading?
6 **A. Yes.**
7 Q. At the June 20, 2006 --
8 MR. GOSSELIN: What page are we
9 on?
10 **A. Page six.**
11 MR. ALLINGHAM: Page six, two
12 thirds of the way down, Jason, are you with
13 me?
14 MR. GOSSELIN: Uh-hum.
15 Q. Do you have any reason to doubt that in
16 fact that the first reading of policy BDDG was at
17 the June 20, 2006 Board meeting?
18 **A. No, I have no reason to doubt that at all,**
19 **sir.**
20 Q. Do you have any recollection as to why
21 policy BDDG was finally adopted seven days later as
22 opposed to the two to three month process that you
23 described for me a minute ago?
24 **A. I believe if you read the next sentence,**

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1 **Mr. Walls asked that these policies be placed on the**
2 **agenda for the special Board meeting on June 27**
3 **since that would be his last meeting.**
4 **Mr. Walls had been chairman of our policy**
5 **committee for many years and I believe he didn't**
6 **want to leave anything unfinished left over. So he**
7 **did not single out BDDG, he basically went with all**
8 **of the rest of them. It was a group item. And if**
9 **you look down below that where it says first and**
10 **second reading, that was on student attendance and**
11 **the reason that one was accepted in the first and**
12 **second is that the changes changing to the policy**
13 **were minor, there was some small word changes. You**
14 **have that I'm sure.**
15 Q. I do and policies IN1, IND, KLA and BDDG
16 were not minor changes, correct, these were
17 significant changes to existing policies or new
18 policies?
19 **A. Yes, or new policies I believe that's**
20 **correct.**
21 Q. Did the Board give any consideration to
22 whether more substantive consideration should be
23 given than the seven day period that apparently
24 these policies were given?

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1 **A. No, I can't comment on that.**
2 Q. But as you recall it it was Mr. Walls'
3 request to accommodate the fact that the June 27
4 meeting would be his last meeting that led to the
5 expedited treatment of the policies?
6 **A. That is correct.**
7 Q. All right, I'm going to come back to that
8 in a minutes we have got to dig up another document.
9 But in the meantime let's turn to something else.
10 Let's turn to a different topic. You are -- well,
11 it's here.
12 MR. ALLINGHAM: Let's mark as
13 Hattier Exhibit 6 a document which is
14 a letter from Richard Horvath to Jason
15 Gosselin dated July 7, 2006.
16 (WHEREUPON Hattier Exhibit 6 was
17 marked for identification.)
18 Q. Have you ever seen Hattier Exhibit 6
19 before?
20 **A. No, sir.**
21 Q. You referred earlier in the deposition to a
22 communication relating to the retention of
23 documents?
24 **A. Yes.**

27 (Pages 102 to 105)

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1 Q. Did that communication, you don't have to
2 tell me what it was, but did it come from
3 Mr. Gosselin's firm?
4 **A. Probably.**
5 Q. And what did you do to retain evidence or
6 documents in response to that request?
7 **A. Anything that related to the ongoing**
8 **litigation was saved.**
9 Q. Did you review or did you take any steps
10 thereafter to preserve any e-mail communications or
11 posts that you may have relating to issues in this
12 litigation?
13 **A. In terms of what Mr. Gosselin has sent me**
14 **as far as know that's still existing, excuse me, I**
15 **apologize.**
16 Q. Fair enough, and I'm not asking, even I
17 will agree that's not --
18 **A. As far as I know it's still on my computer.**
19 Q. That's communications with Mr. Gosselin and
20 his colleagues?
21 **A. Correct.**
22 Q. To the extent that any other e-mail
23 communications or posts relate to the issues in this
24 lawsuit did you preserve them?

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1 **A. I don't think there have been any.**
2 Q. You have not posted to the WMGD forum
3 since --
4 **A. Whatever is on the WMGD forum is already**
5 **there, they maintain their own copy, and besides**
6 **when you post it on there you are not posting it on**
7 **your own computer, you are posting it on theirs.**
8 **So, no I don't retain copies of it, I just wrote it**
9 **on there.**
10 Q. Well, I guess I understand what you've
11 done, but you do understand that a communication to
12 a forum such as the WMGD forum is a communication
13 relating to the topics in this lawsuit?
14 **A. In the sense that that's a legal issue then**
15 **perhaps I have erred.**
16 Q. Okay.
17 MR. ALLINGHAM: And Jason, you
18 said this off the record, you've retained
19 all the tapes?
20 MR. GOSSELIN: Yeah, all of the
21 tapes have been preserved. I only had one
22 conversation with Janet Hearn about this
23 policy, everything has been preserved.
24 MR. ALLINGHAM: Great, okay.

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1 Q. You have been a member of the Indian River
2 School Board since 2002?
3 **A. Yes, sir.**
4 Q. And that means that you've been re-elected
5 once, correct?
6 **A. Yes, sir.**
7 Q. In 2005?
8 **A. 2005, thereabouts.**
9 Q. Am I correct that you hold no other
10 position in the district?
11 **A. That is correct.**
12 Q. Do you serve on any other school boards?
13 **A. No, sir.**
14 Q. Have you ever served on any other school
15 boards?
16 **A. No, sir.**
17 Q. This is what's called a predicate question,
18 are you an active member of any political party?
19 **A. The Republicans hold me on their rolls, if**
20 **you will, in terms of being active, no.**
21 Q. The 2005 election came up after the issues
22 in this litigation, right?
23 **A. Yes, sir.**
24 Q. Did you campaign for re-election to the

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1 School Board using any of your position on any of
2 the issues in this litigation as a --
3 **A. People would ask what my position was and I**
4 **would tell them. In terms of making speeches going**
5 **out in public, what I call the rubber chicken**
6 **circuit, no we did none of that. It was somewhat**
7 **unusual in that regard, that there were no public**
8 **appearances of any type that I remember.**
9 Q. Really not even I don't know, no Rotary?
10 **A. No Rotary.**
11 Q. No Lions Clubs?
12 **A. No Lions Clubs, nope.**
13 Q. Have you given active consideration to
14 running for any other office?
15 **A. Zero.**
16 Q. Mr. Gosselin told me before this deposition
17 began in response to an interrogatory question that
18 we asked that you would describe your religion as
19 Christian, is that correct?
20 **A. Yes, sir.**
21 Q. Any particular denomination?
22 **A. No, sir.**
23 Q. Do you attend church?
24 **A. No, sir.**

28 (Pages 106 to 109)

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1 Q. Do you think that prayer is important?
2 **A. Absolutely.**
3 Q. Do you think that everyone has the right to
4 pray?
5 **A. Yes, sir.**
6 Q. Do you think that everyone has the right to
7 pray even if they will be interpreted as speaking
8 for others in the offering of their prayers?
9 MR. GOSSELIN: Objection.
10 **A. At what point does my right to free speech**
11 **start and stop? So, if I'm offering a prayer for**
12 **you, let's say, that I pray that you go home safely**
13 **and that you do not have an accident, all right, I**
14 **personally don't see anything wrong with that. So,**
15 **I'm not quite sure the question that you are asking,**
16 **sir.**
17 Q. I understand your point. You have been
18 quoted as saying that the issues in this lawsuit
19 relate to the resolution of the potential tension
20 between an individual's right to pray as he pleases,
21 guaranteed by the Constitution and prohibition
22 against establishment of religion by the government,
23 also set forth in the Constitution?
24 **A. I'm not sure that I used those words.**

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1 Q. Okay, fair enough but do you understand
2 that there is a need to resolve those two
3 principles?
4 **A. Yes.**
5 Q. Okay. So that I take it you don't, you
6 clearly don't view it as an unconditional
7 prohibition against any government involvement in
8 religion in any way?
9 MR. GOSSELIN: Objection.
10 **A. Rephrase that, please?**
11 Q. The First Amendment prohibition against
12 establishment of religion is in your view not an
13 absolute prohibition on government involvement in
14 religion in any way?
15 **A. No, it's not.**
16 Q. And am I also correct that the First
17 Amendment right to pray as one sees fit is also not
18 unlimited?
19 MR. GOSSELIN: Objection.
20 **A. I'm not sure I understand what you're**
21 **asking, sir.**
22 Q. Let me give you a specific example. Where
23 a person's offering of a prayer will be perceived by
24 elementary school students as the offering of a

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1 prayer by the Board of Education in the district --
2 **A. Okay.**
3 Q. -- would you agree that that prayer would
4 fall under the prohibition of establishment of
5 religion?
6 **A. No.**
7 MR. GOSSELIN: Objection.
8 Q. And that's a view that you formed yourself
9 not in reliance on the advice of counsel?
10 **A. Correct.**
11 MR. GOSSELIN: Objection.
12 Q. In your view it would be, and I want to
13 link this to the School Board Prayer Policy in
14 particular --
15 **A. Okay.**
16 Q. If every person at the School Board meeting
17 including students invited to attend would perceive
18 the prayer to be a prayer of the district and the
19 Board of Education, you would nevertheless believe
20 it to be appropriate and not prohibited by the
21 Constitution?
22 MR. GOSSELIN: Objection.
23 **A. If I am not mistaken, our Board Prayer**
24 **Policy deals with the fact that it is between the**

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1 **ten members of the Board and does not have to**
2 **involve the public and should not involve the**
3 **public. It is for us to solemnize the occasion.**
4 Q. Why is it -- well, first before I ask that
5 question, and that is the reason for the policy
6 permitting a prayer to be offered at the beginning
7 of sessions, is that right, to solemnize the
8 occasion?
9 **A. That is our primary reason for doing that.**
10 **That's the only reason, let me restate that, thank**
11 **you.**
12 Q. And what purpose is served by solemnizing
13 the occasion?
14 **A. The same purpose that has been served**
15 **historically throughout the history of the United**
16 **States, to put something beyond ourselves, the idea**
17 **that we are saying please you know let us subvert**
18 **our own egos, our own tensions, what we may want so**
19 **that we may do the best for the public. It's the**
20 **same things George Washington has asked for,**
21 **Franklin asked for in World War II, Bush has asked**
22 **for over the years. It's the same thing essentially**
23 **that Congress does when they open theirs. As I**
24 **understand it.**

29 (Pages 110 to 113)

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1 Q. What do you mean by solemnifying the
2 proceedings?
3 A. In other words, we are not simply a group
4 of guys and gals getting together to simply have
5 some fun and to sit around and decide things. It's
6 the idea that we are going to put, the idea that we
7 are going to think beyond ourselves, beyond what's
8 happening today and sit down and make absolutely the
9 best decisions that we can. And it's taking a
10 moment to where you can focus on what your reason is
11 for being there. Otherwise, I believe a lot of
12 people can be caught up in the intensity of the
13 moment and, you know, you can kind of get carried
14 away with yourself. We see politicians on TV all
15 the time and others.
16 Q. So, it's way for the Board members to be
17 reminded that they should take their duties
18 seriously during the meetings?
19 A. That would be my primary reason, yes. And
20 again it's in keeping with what I see as American
21 history.
22 Q. Well, Dr. Hattier, portions of American
23 history, correct? I mean there must have been
24 meetings of legislative bodies that have occurred --

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1 A. More than likely.
2 Q. Where no prayer was offered?
3 A. More than likely.
4 Q. So, when you say it's in keeping with
5 American history, you mean it's not inconsistent
6 with all parts of American history?
7 A. I think that the quote from Rhenquist comes
8 in quite nicely where he says, that it's
9 inconceivable that the founding fathers intended for
10 it not to take place. And I don't remember which of
11 the Supreme Court decisions he was dissenting on at
12 that particular point.
13 Q. That was a dissenting opinion?
14 A. I believe it was a dissenting opinion.
15 Q. It had to do with prayer at what?
16 A. Like I said, I don't have my paperwork at
17 this point. I don't know which one it was, but his
18 comment was that it was inconceivable. You know, if
19 people choose not to do it that is their freedom do
20 so, but if they choose to do it, I believe they have
21 the freedom to do that as well. You are defining it
22 in terms of prayer. I prefer to look at it as an
23 issue of free speech.
24 Q. Yes, my question actually has to do --

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1 MR. GOSSELIN: Is there a
2 question? This is actually a very
3 interesting philosophical discussion that I
4 have had many times, I'm sure you have,
5 too. There aren't any questions about what
6 the Board's policy is.
7 MR. ALLINGHAM: Well, the Board's
8 reasons for adopting the policy are quite
9 clearly relevant under anyone's
10 understanding of the court's order. If the
11 witness says to me gratuitously and I think
12 it's in keeping with the history of our
13 country, I think that I'm obligated to
14 pursue that. And if we end up on a tangent
15 as a result of my pursuit that may be my
16 fault, but it's a function of trying to
17 follow up on what the witness has offered
18 me.
19 Q. In an earlier answer, Dr. Hattier, you
20 said, and correct me if I am wrong, but I think I
21 have this right, that Board prayer should not
22 involve the public. Can you tell me first if that's
23 what you said and secondly what you meant by that?
24 A. The policy as we currently have it involves

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1 the adult Board members of the Board itself, all
2 right and the public, we were specifically including
3 only ourselves.
4 Q. As of the group of people who would be
5 offered the opportunity to offer a prayer?
6 A. Yes. As well as among ourselves and to
7 whom the prayer would concern.
8 Q. So, when you said the Board prayer should
9 not involve the public what you meant was the policy
10 does not contemplate that anyone other than Board
11 members should offer it?
12 A. No that anyone other than Board members
13 should partake.
14 Q. Oh, and that's because the goal is to
15 remind Board members that they must take their
16 duties seriously and do the best they can to
17 discharge their responsibilities?
18 A. That's what we ought to do, yes sir.
19 Q. Okay. And why then could the Board not
20 shortly before it steps onto the stage conduct its
21 own prayer outside of the public view?
22 A. I don't have an answer to that.
23 Q. We talked earlier about the issue of denomi
24 -- it's a word I have trouble with, denominational

30 (Pages 114 to 117)

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1 or nondenominational prayers?
2 **A. Correct.**
3 Q. Is it your view that if Christians don't
4 mention Christ in their prayers they are denying
5 Christ?
6 **A. You are asking me --**
7 MR. GOSSELIN: Objection.
8 **A. You are asking me to make a comment about**
9 **Christianity. I cannot comment on that since there**
10 **are many different denominations within**
11 **Christianity. I don't know if they are denying**
12 **Christ. I was raised in the United States Army and**
13 **I attended many functions that were conducted by a**
14 **military chaplain and I don't see a military**
15 **chaplain having problems with giving a prayer for a**
16 **larger group without mentioning Christ and yet it**
17 **still can be an effective prayer.**
18 Q. Effective for the purpose of whatever
19 purpose it's offered, correct?
20 **A. Correct.**
21 MR. ALLINGHAM: I'm going to ask
22 the reporter to mark as Hattier Exhibit 7 a
23 document bearing Bates numbers 710 through
24 860.

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1 (WHEREUPON Hattier Exhibit 7 was
2 marked for identification.)
3 **A. Oh joy.**
4 Q. Why do you say oh joy?
5 **A. Because of the length of the document that**
6 **we have.**
7 Q. Hattier Exhibit 7 is a copy of postings on
8 the WGMD web site. Is this a web site that you log
9 onto from time to time?
10 **A. Very occasionally.**
11 Q. And have you posted to this web site from
12 time to time?
13 **A. At one very short time period.**
14 Q. When was that?
15 **A. I don't know, earlier possibly this summer,**
16 **spring.**
17 Q. Of this year?
18 **A. I don't remember.**
19 Q. Spring, summer of this year?
20 **A. It's dated were I can look try date**
21 **whatever its laps to be.**
22 Q. What prompted you to log onto the web site
23 and post on it?
24 **A. Somebody had made some comments that I**

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1 **should probably look on the web site and I did. I**
2 **responded one or two times, maybe three, I don't**
3 **remember, after which I decided that that's enough**
4 **of that.**
5 Q. Who suggested that you should visit the web
6 site?
7 **A. I don't recall. I knew that it was there,**
8 **and I knew that the public was writing in about it,**
9 **but that's about it.**
10 Q. There are what we call Bates numbers down
11 at the bottom of the page, can you turn to page 836?
12 **A. Okay. Yes.**
13 Q. If you looking up at the top of the page
14 you will see a reflection that the following posts
15 posted by someone identified as dghattierdc?
16 **A. Correct.**
17 Q. Is that you?
18 **A. Yes.**
19 Q. Dghattierdc?
20 **A. Yes, sir that's a standard notation that I**
21 **use everywhere.**
22 Q. If you will look at page 832?
23 **A. Okay.**
24 Q. And by the way I should ask you, the 836

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1 post, is that post that you wrote and posted to the
2 WMGD forum?
3 **A. Yes, it is.**
4 Q. And what's reflected in that post you
5 believed to be, and continue to believe that that is
6 reflective of your beliefs?
7 **A. Yes.**
8 Q. Now, on 832, same questions, is it correct
9 that this is a post that you wrote, dghattierdc?
10 **A. Yes.**
11 Q. And it reflected your views as of that
12 time?
13 **A. Yes.**
14 Q. And it reflects your views today?
15 **A. Yes.**
16 Q. At the end of that post you write,
17 unfortunately with historic research lots of things
18 can be taken out of context and argue in a number of
19 ways. It is best to look at the whole body of what
20 the founders said and did and not just parts of it.
21 **A. Yes.**
22 Q. You did not intend in this post to provide
23 to the reader the whole breadth of what the founders
24 said and did, did you?

31 (Pages 118 to 121)

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1 **A. No.**
2 Q. As with all people you were picking and
3 choosing?
4 MR. GOSSELIN: Objection.
5 **A. I believe that what I was doing was**
6 **countering some of the discussions in the previous**
7 **postings.**
8 Q. Which also offered only a partial view of
9 what the founders said?
10 **A. Correct.**
11 Q. Turn if you would to 829. In this post you
12 will see it's dated March 17, 2006, dghattierdc and
13 this is a post that you wrote and which you believe
14 belief to be accurate?
15 **A. Yes.**
16 Q. And reflected your views at the time and
17 today?
18 **A. Yes, I believe so.**
19 Q. Down at the bottom of the page you write,
20 in my mind a prayer, be it it sectarian or
21 nonsectarian still steps on someone's toes. For
22 those who don't like prayer of any kind it's
23 offensive, for a Muslim it's really bad, for a
24 Christian without mentioning Christ it's denying

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1 Christ. And either way it appears to be telling
2 someone how to use their free speech. Does that
3 accurately reflect your views?
4 **A. Yes. You can read on, which violates the**
5 **First Amendment protections against free speech. A**
6 **true catch 22.**
7 Q. In that post you write a Christian without
8 mentioning Christ is denying Christ?
9 **A. Yes.**
10 Q. Which is the question that I asked earlier?
11 **A. I was perhaps more specific in this post**
12 **than I'm in my own personal life, but as I indicated**
13 **earlier to lots of Christians without mentioning**
14 **Christ is denying Christ, if you don't mention**
15 **Christ for a lot of Christians.**
16 Q. So, for you personally to offer a prayer
17 that doesn't mention Christ is not denying Christ?
18 **A. Not at all.**
19 Q. But you believe that there are Christians
20 for whom offering up a prayer that doesn't mention
21 Christ would be denying Christ?
22 **A. Yes, sir.**
23 Q. And would offering up no prayer at all be
24 denying Christ for such Christians?

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1 **A. No, but it would be denying free speech.**
2 Q. Page 820. Is this a post that you wrote?
3 **A. Yes.**
4 Q. And which you believe to be accurate
5 then --
6 **A. Yes.**
7 Q. Believe to be accurate then and now?
8 **A. Yes.**
9 Q. The last paragraph of this post refers to
10 your belief that support for the revolution was
11 never 100 percent. My reading of history shows
12 maybe 35 to 40 percent.
13 MR. GOSSELIN: What page are we on
14 here?
15 **A. Page 821.**
16 MR. ALLINGHAM: Page 821 at the
17 bottom.
18 Q. A little bit earlier you say, as the
19 founders once said, and for the support of this
20 declaration with a firm reliance on the protection
21 of the divine providence, we mutually pledge to each
22 other our lives, our fortunes and our sacred honor?
23 **A. Yes, sir.**
24 Q. And then you note that remember support for

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1 the revolution was never 100 percent?
2 **A. Correct.**
3 Q. My reading of history shows maybe 35 to 40
4 percent. Should they have given up. Are we less
5 than that today. What did you mean by that
6 discussion about support for the revolution?
7 **A. People like to make the comment that we**
8 **live in severely divided times, and it's never been**
9 **more divided, but what they forget is that during**
10 **the Revolutionary War we didn't have a fairly**
11 **sizable proportion of that they call Tories were**
12 **very loyal to the Crown that that percentage was a**
13 **high as 30 to 35 percent with a goodly number of**
14 **people who were fighting in the revolution against**
15 **the Crown as well as a whole lot of people in the**
16 **middle who really couldn't care less and just knew**
17 **that their lives were being interrupted.**
18 **So, my point in making this is even though**
19 **all the other people are saying we should do this,**
20 **we should do that, it's divisive, it's not divisive.**
21 **You know, I don't see in -- and I believe it was**
22 **referring to other things I had read in the past.**
23
24 Q. When you say my reading of history shows

32 (Pages 122 to 125)

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1 maybe 35 to 40 percent, does that refer to support
2 for the revolution or opposition?
3 **A. Support.**
4 Q. And when you say should they have given up
5 you mean the revolutionary supports?
6 **A. Correct, the Founding Fathers, should they**
7 **have given up. I think it's an excellent rhetorical**
8 **question.**
9 Q. On 813. Is this a post that you wrote?
10 **A. Yes.**
11 Q. And it accurately reflected your views then
12 and now?
13 **A. Yes.**
14 Q. In this post you offer a number of
15 observations relating to the separation of church
16 and state, and whether the founders required total
17 freedom from religion everywhere you go.
18 Was this post based on your own knowledge
19 of history, were you referring to documents when you
20 wrote this post?
21 **A. This is based on any own knowledge of**
22 **American history.**
23 Q. When you posted under Delaware law the
24 Board is a legislative body, this is a matter of

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1 under Delaware law the Board is a legislative body,
2 this is a matter of law, that means that Chambers
3 applies. What do you rely on for that?
4 **A. Common sense.**
5 Q. All right.
6 **A. That's it?**
7 Q. Those are the only five posts I found.
8 **A. Those are the only ones I made.**
9 MR. GOSSELIN: Tom did you have a
10 plan for lunch?
11 MR. ALLINGHAM: No, I don't, what
12 do you want to do it's 12:30?
13 MR. GOSSELIN: Well, we've been
14 here three hours, it sounds like we are
15 going to be going the full six hours with
16 Dr. Hattier. I mean if you are, if I am
17 wrong on that if you think you are
18 somewhere reasonably close to finishing I
19 wouldn't mind pushing through.
20 MR. ALLINGHAM: I'm not.
21 MR. GOSSELIN: Okay, then I think
22 we probably ought to take a break for
23 lunch.
24 MR. ALLINGHAM: How close can you

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1 law, what --
2 **A. That's my understanding. I'm under --**
3 **excuse me, please. On that one doctor, Judge Farnan**
4 **had ruled that we are a legislative body and**
5 **therefore had legislative immunity. Now again, I'm**
6 **not an attorney but the way I understood it, based**
7 **on the functions that we perform as a Board in**
8 **terms of setting policies, taxes, et cetera, we**
9 **qualify as a legislative body and for some reason I**
10 **am under the impression that somewhere in Delaware**
11 **it says that we are. Or at least the judge decided**
12 **that we were. I will defer to judge's opinion on**
13 **this.**
14 Q. Is it your understanding that Judge Farnan
15 decided the Marsh v Chambers applies to the Indian
16 River School Board?
17 **A. Could you repeat that?**
18 Q. Is it your understanding that Judge Farnan
19 decided that Marsh v Chambers applies to the Indian
20 River School Board?
21 **A. Again I am not an attorney but no had Judge**
22 **Farnan applied that I don't think we'd be sitting**
23 **here today.**
24 Q. All right, so, when you say in your post

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1 get food?
2 MR. HATTIER: McDonald's.
3 MR. ALLINGHAM: How close?
4 MR. HATTIER: About three or
5 four minutes. There is also a
6 Schaeffer's no Schaeffer's is closed,
7 there is Doyle's which is a family
8 restaurant.
9 MR. ALLINGHAM: We can get
10 something a few minute away.
11 MR. HATTIER: There is a local
12 pub, I can't tell you anything about their
13 food.
14 MS. DUPHILY: We are going off the
15 record at 12:35 p.m..
16 (WHEREUPON a lunch recess was
17 taken)
18 MS. DUPHILY: We are back on the
19 record at approximately 1:26 p.m.
20 Q. Dr. Hattier, I asked you a few questions
21 before we -- in the morning session about the
22 identify of the Does and whether you had personally
23 made any efforts to confirm your views about who the
24 Does are. I have a follow-up questions. Do you

33 (Pages 126 to 129)

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1 believe that it would be inappropriate for Board
2 members to, or district employees to reveal the
3 identity of the Does?
4 **A. I believe that the courts have stated that**
5 **they have the right to anonymity.**
6 Q. Do you therefore think it would be
7 inappropriate for Board members to reveal their
8 identity?
9 **A. I think we are bound by what the court**
10 **says, yes.**
11 Q. I want to follow-up on a couple of
12 questions that we asked before the break. Before
13 the break I asked you whether the purpose of the
14 Board Prayer Policy was to solemnize the Board's
15 proceedings and we agreed that was the only purpose
16 for the Board Prayer Policy, correct?
17 **A. Yes, sir.**
18 Q. Am I then correct that the purpose of Board
19 prayer as set forth in the policy is not to
20 proselytize?
21 **A. That is correct.**
22 Q. And it is not to affect or influence the
23 members of the public who may be in attendance at
24 Board meetings?

1 **A. The way the book was written and the way**
2 **Muhammad presented himself halfway through. The**
3 **first part of the Koran seems to deal with issues of**
4 **taking care of widows and orphans and how you live**
5 **you life and then the last half of the book it**
6 **appears to me that he was more concerned with**
7 **passing on a dynasty of sorts and how that was to**
8 **take place.**
9 **Whereas Judaism and Christianity tend to be**
10 **peaceful religions to a large degree. The latter**
11 **half of the Koran they talk a lot about beheading**
12 **people and that the only true response to being**
13 **around a Muslim is either submit, convert or die, I**
14 **think that's called the Dhimmi, D-H-I-M-M-I.**
15 **I could be wrong but this is my**
16 **understanding of it. But if a person wished to**
17 **practice Islam in their way that did not involved**
18 **any injury or whatever to my family any threats to**
19 **my family I have no problem with that. Neither**
20 **Buddhism, Taoism, Shintoism, you know, pick one.**
21 Q. Do you have a belief as to what the
22 majority religion is among voters in the district?
23 **A. My believe would be that it's majority**
24 **Christian based.**

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1 **A. That's the way I would see it, sir.**
2 Q. And similarly the purpose it not to affect
3 or influence district students who might be in
4 attendance at the meeting?
5 **A. That is correct, sir.**
6 Q. I asked you how many residents there were
7 in the district you which you weren't sure about, do
8 you know how many student there are in the
9 district's schools?
10 **A. I believe at this point we are around 7900**
11 **give or take a few.**
12 Q. Do you believe that Christianity is the
13 only true religion?
14 **A. No.**
15 MR. GOSSELIN: Objection.
16 Q. Do you believe the Judaism is a valid a
17 religion as Christianity?
18 **A. Absolutely.**
19 Q. Do you believe that Islam is a valid a
20 religion as Christianity?
21 MR. GOSSELIN: Objection.
22 **A. Philosophically that one I could argue to**
23 **some degree.**
24 Q. What's the basis for your argument?

1 Q. And the same would be true of the students
2 in the district's schools?
3 **A. That would be my general belief, yes sir.**
4 Q. How about teachers in the district, same?
5 **A. Well if they are based on the average**
6 **population then yes sir.**
7 MR. ALLINGHAM: This is Hattier
8 Exhibit 8 a document bearing Bates number
9 BPD1034.
10 (WHEREUPON Hattier Exhibit 8 was
11 marked for identification.)
12 Q. Hattier Exhibit 8 is a policy of the Indian
13 River Board of Education designated BBA entitled
14 School Board Powers and Duties. Take a minute to
15 review the powers and duties set forth there and
16 tell me if you agree that those powers and duties
17 are powers and duties of the Indian River School
18 Board?
19 **A. As I understand them as listed in the**
20 **Delaware Code, yes sir.**
21 Q. Okay. In addition, or maybe as a fleshing
22 out of the duties of the Board in Hattier Exhibit 8,
23 would you agree that among the Board's duties is to
24 approve curriculum in district schools?

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1 **A. Yes.**
2 Q. And to determine which textbooks to buy for
3 district schools?
4 **A. Yes.**
5 Q. And to handle the district's finances?
6 **A. Yes.**
7 Q. And to approve the use of district
8 facilities?
9 **A. Yes.**
10 Q. And that would include the approval of
11 school use applications?
12 **A. Yes.**
13 Q. I may not have this one right, does the
14 School Board also approve school choice
15 applications?
16 **A. Yes.**
17 Q. And the School Board is involved in
18 determining the punishment for students who violated
19 the district's Code of Conduct, is that correct?
20 **A. Yes.**
21 Q. In fact there are some punishments for
22 students who violate the district's Code of Conduct
23 that can't be imposed without School Board approval,
24 isn't that correct?

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1 **A. Correct.**
2 Q. Expulsion is one of those?
3 **A. Yes.**
4 Q. Any others, suspension?
5 **A. Certain forms of suspension, carrying a**
6 **firearm, certain types of drugs. It's a fairly**
7 **broad list. I mean it's actually a multi-tiered**
8 **process. In other words, some things happen at a**
9 **local level, there are some in house suspensions and**
10 **there are some out of school suspensions that happen**
11 **strictly at the school level itself. Then there are**
12 **other offenses if it's happened three to four times**
13 **that it would rise to the School Board level and in**
14 **which case it's usually adjudicated by a hearing**
15 **over before we get to it, and that is in accordance**
16 **with Delaware law.**
17 Q. All right, so there is a spectrum of
18 punishments that can't be imposed --
19 **A. Correct --**
20 Q. You have to let me finish the question?
21 **A. I'm sorry, sir.**
22 Q. That can't be imposed without School Board
23 approval?
24 **A. Yes.**

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1 Q. Okay. This probably falls under the
2 finance obligation, but the School Board is
3 ultimately responsible for adopting the district's
4 annual budget, correct?
5 **A. Yes.**
6 Q. And for hiring teachers?
7 **A. Ultimately we are responsible for it, but**
8 **the selection process happens at a more local level.**
9 Q. That is to say you don't do the
10 interviewing and all that?
11 **A. No, sir, we do not.**
12 Q. But you must approve the hiring?
13 **A. Right.**
14 Q. Okay. Is the School Board responsible for
15 the firing of teachers?
16 **A. Same thing.**
17 Q. Okay. And is the School Board involved in
18 determining discipline for teachers who violate
19 district policies?
20 **A. I'm going to say yes.**
21 Q. The School Board is responsible for hiring
22 district employees including the superintendent?
23 **A. Correct.**
24 Q. And also for firing that same class of

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1 employees?
2 **A. Yes.**
3 Q. A little bit more specific or down to
4 earth, the School Board approves field trips for
5 district school students?
6 **A. Correct.**
7 Q. Is that something that's required by law or
8 is that just something that the Board feels it's
9 appropriate for it to do?
10 **A. I don't know.**
11 Q. Historically --
12 **A. Historically that's what we have done all**
13 **along.**
14 Q. The School Board has chosen to give
15 students awards at it's meetings, is that correct?
16 **A. Some awards at some meetings, yes.**
17 Q. And in addition do giving at some meetings
18 its own awards it also sometimes invites students to
19 recognize them for special achievements that they've
20 been made as students of the district's schools?
21 **A. I believe that to be true.**
22 Q. Now, I want to separate out public sessions
23 of the School Board, would you agree with me that at
24 the public sessions the Board, during your tenure,

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1 spends the majority of its time on supervising
2 construction projects, that is to say discussing and
3 supervising construction projects, or recognizing
4 students either by giving them awards directly or
5 recognizing them for awards or achievements?
6 **A. A majority of our time?**
7 Q. Yes.
8 **A. No, I would not agree.**
9 Q. A substantial part of your time?
10 **A. Yes.**
11 Q. The School Board, whether it's the majority
12 of the time or not, the School Board does approve
13 construction projects for the district?
14 **A. Yes we do, sir.**
15 Q. And the School Board monitors those
16 construction projects?
17 **A. Yes, we do.**
18 Q. Do you receive updates on the constructions
19 projects at public meetings?
20 **A. Yes we do.**
21 Q. Who do those come from?
22 **A. We have a management company EDIS who**
23 **handles most of the big details and they will come**
24 **both to the School Board meetings as well as to a**

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1 **separate buildings and grounds meeting, as well as a**
2 **separate finance committee meeting if indicated.**
3 Q. Okay, so in effect the construction
4 managing, sorry, the construction management company
5 provides reports on construction projects to the
6 Board?
7 **A. Yes they do, sir.**
8 Q. Does the School Board approve materials
9 used for district facilities?
10 **A. What do you mean by materials?**
11 Q. Well, it means to be a broad question, but
12 I can give you some examples. For example, does the
13 School Board approve sod or field materials for the
14 district's athletic facilities?
15 **A. We have, we have approved it, we have**
16 **discussed it mostly in the sense that we want to**
17 **make sure that all buildings are treated equally, in**
18 **the north south of the district, but some of those**
19 **things again will simply happen.**
20 **Recently we have tightened up the policy**
21 **because we have found that some of the schools are**
22 **moving out on their own a little bit in areas where**
23 **a joint policy for everything might be better. In**
24 **other words, choosing Kentucky 31 instead of Bermuda**

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1 **grass. Something like that.**
2 Q. So --
3 **A. The determ -- I'm sorry, go ahead.**
4 Q. I think I interrupted you, go ahead.
5 **A. We made the determination that Kentucky 31,**
6 **it may be more expensive, it may not, I don't know**
7 **much about grass seeds. But it seems to be that the**
8 **Kentucky 31 grows better, wears better than Bermuda**
9 **grass, which may be less expensive. Some of our**
10 **people in the past have wanted to see with Bermuda**
11 **grass and you know, rather than having them do it ad**
12 **hoc let's just take a look at a broader picture.**
13 Q. So, that's an example of something where
14 the Board took within it's handling responsibilities
15 the selection of a what I call the material?
16 **A. Based on a competent outside advice, yes**
17 **sir.**
18 Q. Would you agree with me that buying
19 textbooks, approving the use of district facilities,
20 approving school use applications and school choice
21 applications, punishing students or teachers who
22 violate the district's policy, hiring and firing
23 district employees, approving field trips, giving
24 student awards and approving and overseeing

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1 construction projects have nothing to do with the
2 setting of the Board policy?
3 **A. Would you read that again, please?**
4 Q. Sure. Just so that you have it in mind,
5 its going to be sequence of Board responsibilities
6 which we've just established in questions and then
7 I'm going to ask you whether you believe, I could
8 ask you individually but will ask you broadly
9 whether you believe that each of those
10 responsibilities does not fall within the Board
11 responsibilities of setting Board policy, okay?
12 Do you have it?
13 **A. I have got the big picture.**
14 Q. Would you agree with me that buying
15 textbooks, approving the use of district facilities,
16 approving school use applications, approving the
17 school choice applications, punishing students or
18 teachers who violate district policy, hiring or
19 firing districts employees, approving field trips,
20 giving students awards and overseeing or approving
21 construction projects have nothing to do with
22 setting Board policy?
23 MR. GOSSELIN: Objection.
24 **A. Yes and no both.**

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1 Q. Tell me, elaborate so I can understand?
2 A. That is an easy one for the most part.
3 Maybe not easy, but if you are setting a policy as
4 to what constitutes a student punishment and what
5 doesn't, those are things that get deliberated over
6 quite a bit. There was a time period where we were
7 discussing the types of athletic enhancement drugs
8 that could be allowed. Are we going to go with what
9 the NCAA wants as their list? Did we want to break
10 out from that. It would be set as a matter of
11 policy is what the students can take and what they
12 can't, so that is a matter of policy.
13 Then you have the policy in terms of how
14 would you punish a student for violating that. You
15 know, would you immediately expel a student or do we
16 have a policy where we say, you know what first time
17 anybody can do something, all right let's work with
18 you, let's educate you on what the right way to do
19 it is and then don't do it again.
20 Second time out, okay you have already been
21 instructed, now you've had the details in front of
22 you. Now, if you do it again, now you are subject
23 to some kind of a punishment, that is a policy.
24 Q. I think I understand the distinction that

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1 you are trying to draw. Let me ask you this
2 question. In areas, among the areas that I talked
3 to you about, there are instances in which the Board
4 has adopted a policy?
5 A. Uh-hum.
6 Q. Say on what punishments would be applied
7 for violation of performance enhancing drug policy?
8 A. Okay.
9 Q. Okay. Is that an example we can use?
10 A. Again it works, yes sir.
11 Q. And what you were saying when you said yes
12 and no, is that the setting of that policy does
13 involve the Board's policy responsibilities?
14 A. I believe so.
15 Q. Once that policy is in place then the
16 application of the policy and the decisions that
17 need to be made in order to determine where somebody
18 falls in the policy, that kind of determination us
19 not the setting of policy but the execution of the
20 policy?
21 A. Yes, sir.
22 Q. Or the administration of the policy?
23 A. Yes, sir.
24 Q. And so, that was an example along the list

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1 of things that I gave you. Can we agree that the
2 decisions on buying textbooks does not involve the
3 Board's policy responsibilities?
4 MR. GOSSELIN: Objection.
5 A. I don't have an opinion on that at the
6 moment, sir. And the reason I say that is because
7 if we look at some textbooks from some of the
8 manufactures, some of them have more opinion in them
9 than others. You know, we would want something
10 that would line with what the district policies are
11 in terms of how we want the education to go. So, I
12 don't know that I could answer that yes or no.
13 Q. Okay. In all events we can agree that the
14 School Board does administer and enforce whatever
15 policies it adopts?
16 MR. GOSSELIN: Objection.
17 A. That is correct.
18 MR. ALLINGHAM: Hattier Exhibit 9,
19 please.
20 (WHEREUPON Hattier Exhibit 9 was
21 marked for identification)
22 Q. Okay.
23 A. Okay.
24 Q. You've seen this paper before, correct?

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1 A. Yes, sir, I have.
2 Q. This is the Board Prayer at Regular Board
3 Meetings that I have referred you to earlier?
4 A. Yes, sir.
5 Q. When did the School Board first consider
6 adopting policy BDA.1, the School Board Prayer
7 Policy?
8 A. On or about August, September 2004.
9 Q. Was it in response to any particular event
10 or occasion?
11 A. Yes, sir.
12 Q. What was that?
13 A. It was in response to the potential, it not
14 already overt lawsuit that we are discussing today.
15 MR. ALLINGHAM: Mark as Hattier
16 Exhibit 10 a document bearing Bates numbers
17 BPD510 and 511.
18 (WHEREUPON Hattier Exhibit 10 was
19 marked for identification)
20 Q. Have you seen Hattier Exhibit 10 before?
21 A. I do recall seeing this in the past, yes
22 sir.
23 Q. And is this the triggering event for the
24 Board's consideration of a School Board Prayer

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1 Policy?
2 **A. This arrived on or about the same time**
3 **period.**
4 Q. Correct.
5 **A. Whether this was the exact trigger or not,**
6 **I don't know.**
7 Q. Did you vote to adopt Board Policy BDA.1?
8 **A. Yes, I did.**
9 Q. And I take it you continue to support that
10 policy?
11 **A. Yes, sir, I do.**
12 Q. Did you understand that there was a history
13 of the Board opening its meetings with prayer at the
14 time that the School Board Prayer Policy was
15 adopted?
16 **A. Yes, sir.**
17 Q. If there was already a history of the Board
18 opening its meetings with prayer why did you need a
19 policy at all?
20 **A. Because we did not have one at the time.**
21 **At least I don't think we did, I might be wrong on**
22 **this. My understanding was that with everything**
23 **else that was coming down having a policy on**
24 **something wouldn't be a bad idea.**

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1 Q. How did you come to see Hattier Exhibit 10,
2 the letter from Miss Fennell?
3 **A. It was either faxed to me or handed in a**
4 **package of some type. My guess is that it may have**
5 **been faxed.**
6 Q. Do you know who faxed it to you?
7 **A. It would have been central office, I**
8 **believe.**
9 Q. And did you then take it with you to the
10 next Board meeting?
11 **A. No.**
12 Q. Was its contents discussed at the next
13 Board meeting?
14 **A. More than likely, yes, sir.**
15 Q. All right, I'm going to come back to my
16 earlier question, do you know who first suggested
17 that the Board adopt a policy on School Board
18 prayer, you answer that question yes or no?
19 **A. No, I don't recall.**
20 Q. Do you recall without knowing who it was,
21 do you recall whether it was an attorney or a Board
22 member?
23 **A. I do not recall that either.**
24 Q. Do you recall that the Board considered

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1 several versions of a Board policy on School Board
2 prayer?
3 **A. I believe we might have, or at least I**
4 **might have seen several, maybe two.**
5 MR. ALLINGHAM: Let's mark as
6 Hattier Exhibit 11 a copy of a document
7 bearing Bates number BPD 698.
8 (WHEREUPON Hattier Exhibit 11 was
9 marked for identification)
10 Q. Have you ever seen Hattier Exhibit 11
11 before?
12 **A. I think so.**
13 Q. Do you know when?
14 **A. No.**
15 Q. Or in what context?
16 **A. I'm assuming it would in the context of**
17 **what we are discussing here today.**
18 Q. Do you know who provided it?
19 **A. No, sir.**
20 Q. Do you know whether that was the first
21 draft of a Board Prayer Policy that the Board
22 considered?
23 **A. That would be my assumption?**
24 Q. And what's that assumption based on?

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1 **A. The way it's bunched together in one**
2 **paragraph form.**
3 Q. Do you know who drafted that document?
4 **A. My assumption again would be that it would**
5 **be a person on the policy committee, possibly Harvey**
6 **Walls. Harvey was chairman of the policy committee**
7 **for a very long time period.**
8 Q. Was it your understanding that Mr. Walls
9 was generally the drafter of policies proposed to
10 the Board for adoption?
11 **A. Mr. Walls was the one who coordinated what**
12 **the various responses would have been at the policy**
13 **meetings. To my knowledge he did not act alone. To**
14 **any knowledge he would have discussed things with**
15 **other people and then whatever the consensus is he**
16 **probable would have written up the first copy. It's**
17 **possible that Mrs. Hearn typed some things together**
18 **and then Harvey reviewed it and then okayed it.**
19 Q. But as a general proposition its your
20 understanding that the initial drafts person for
21 policies was Mr. Walls?
22 **A. It would have come out of his committee,**
23 **that part I can say for sure.**
24 Q. Do you recall any discussion of the rulings

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1 of it United States Court of Appeals Third Circuit,
2 that is referenced in the first line of Hattier
3 Exhibit 11. I'm sorry, sir, that's okay. It says
4 following the rulings of the United States Court of
5 Appeals Third Circuit?
6 **A. No, that I do not.**
7 Q. Do you recall whether there was a
8 discussion of those rulings?
9 **A. There may have been, we had a lot of**
10 **discussions at that particular time, but I don't**
11 **whether that one came up.**
12 Q. On way or another, you don't recall one way
13 or another?
14 **A. No, I do not.**
15 Q. Do you have any recollection as to why that
16 language and the language and past practices of
17 State of Delaware legislative bodies which continues
18 over to the second explain was not included in the
19 final version of the Board Prayer Policy?
20 **A. No, I don't.**
21 Q. In the summer of 2004 we established, I
22 think we established the time in point of view, the
23 Board had it's own attorney Mr. Griffin, correct?
24 **A. Yes.**

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1 Q. Am I correct based on your earlier answer
2 that you don't believe that Mr. Griffin drafted this
3 Hattier Exhibit 11 proposed policy?
4 **A. I don't think he did.**
5 Q. Do you know whether Mr. Griffin was
6 consulted at any point in the process of it
7 consideration and adoption of the Board Prayer
8 Policy?
9 **A. No, I do not.**
10 Q. Is it correct that you don't have any
11 present recollection that he was consulted?
12 **A. I don't have a present recollection that he**
13 **was. I don't know that he wasn't either.**
14 Q. Am I correct that you don't recall
15 Mr. Griffin's ever having provided any advice about
16 any draft of the School Board Prayer Policy?
17 **A. Not to my knowledge.**
18 MR. ALLINGHAM: Would you mark as
19 Hattier Exhibit 12 a document bearing Bates
20 numbers BPD699 to 703.
21 (WHEREUPON Hattier Exhibit 12 was
22 marked for identification)
23 Q. Take as much time as you want to to look at
24 it, but my first question to you, sir, is have you

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1 ever seen it before?
2 **A. I think so. There is something about this**
3 **that looks familiar. Let's put it that way.**
4 Q. Do you recall the context in which you
5 looked at it?
6 **A. It might have been in the meeting with**
7 **Mr. Neuberger. It probably was in a meeting with**
8 **Mr. Neuberger.**
9 Q. And What leads you to that conclusion?
10 **A. The it lengthiness of it.**
11 Q. Well, he is no different from any other
12 lawyer?
13 **A. No, sir he certainly isn't.**
14 Q. Anything else?
15 **A. That's it.**
16 Q. I'm going to operate on the premise that
17 you are right and that this was looked at in the
18 context of a meeting with Mr. Neuberger. Do you
19 know when such meeting took place?
20 **A. Again, on or about August, September,**
21 **October of 2004.**
22 Q. Look at the last page of exhibit 12?
23 **A. Okay.**
24 Q. You will see that there is what appears to

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1 be a file designation Indian River/public proposed
2 prayer resolution August 30, 2004?
3 **A. Okay.**
4 Q. Is that a district file designation?
5 **A. No, sir, not to my knowledge. If I**
6 **remember from the ones I've seen they usually have a**
7 **file and file extension afterwards, as opposed to**
8 **just a straight statement like this. Usually the**
9 **XLS or whatever the word document doc, something**
10 **like that. And it wouldn't be up that high either.**
11 **Generally speaking they'd be at the bottom of the**
12 **page. That's what I remember.**
13 Q. Then let me have you turn to the top of the
14 first page and you will see in brackets, it reads,
15 for release to the general public proposed School
16 Board Prayer Resolution dated 8/30/04 --
17 **A. Okay.**
18 Q. Prepared by the Rutherford Institute with a
19 telephone number and the Neuberger firm with a
20 telephone number?
21 **A. Correct.**
22 Q. Is it your belief that this document was
23 prepared by, and distributed to the Board prepared
24 by the Rutherford Institute and the Neuberger form,

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1 firm and distributed to the Board by Tom Neuberger?
2 **A. As I stated, I believe this is consistent**
3 **with something that he would have prepared.**
4 Q. Can we agree that it is likely that it was
5 distributed to the Board on or after August 30,
6 2004?
7 **A. I would agree to that. Again my assumption**
8 **is that it happened in that time frame somewhere.**
9 Q. And you do recall that it was distributed
10 to each Board member at that meeting?
11 **A. Yes, sir, I do.**
12 Q. Did anyone have any comments about this
13 document?
14 **A. I believe we discussed it at length.**
15 Q. Did you have any comments about this
16 document?
17 **A. Speaking for myself I would have to say**
18 **that I by and large agree with what's in it. I mean**
19 **I certainly feel that, you know I agree with what**
20 **George Washington wrote and Abraham Lincoln and I am**
21 **somewhat familiar with what Franklin Roosevelt would**
22 **have stated, as wells as president George Bush.**
23 Q. I'd like you to, before I go back to the
24 comments and opinions of Board members, I'd like you

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1 to compare page four at the bottom of Exhibit 12 to
2 the final Board policy which is Exhibit 9?
3 **A. All right, sir.**
4 Q. With the exception of some minor wording
5 changes in paragraph one, would you agree with me
6 that the five paragraphs at the bottom of pave five
7 are identical to the policy ultimately adopted?
8 **A. Substantively, yes.**
9 Q. On the other hand, the first four and a
10 half pages of the document were not adopted, was
11 there a reason for that?
12 **A. As stated earlier I believe it's**
13 **unnecessarily lengthy.**
14 Q. Was there any discussion of whether to
15 adopt, I'm going to call it the preamble to the five
16 paragraphs, was there any discussion at the Board
17 level of whether to adopt the preamble as well as
18 the five numbered paragraphs?
19 **A. I don't recall any real discussion.**
20 Q. Because the draft prepared by the
21 Rutherford Institute appears to have included the
22 preamble in the Policy on Prayer at Board Meetings
23 as you can see from the first page. You don't
24 recall any discussion about why it was taken out of

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1 the final policy?
2 **A. As a general rule, and I'm speaking for**
3 **myself, okay, the more that you have written down**
4 **the more it is for somebody to have an ability to**
5 **attack you at a later time period, and I think that**
6 **by keeping it short and concise it makes it a lot**
7 **easier to administer.**
8 **One of the problems in my believe is that**
9 **we have too many laws that are too wordy as it is**
10 **and it allow too much room for people to insert**
11 **their own interpretations. There is old statement,**
12 **kiss keep it simple stupid. And I think that**
13 **admonition applies in this particular case.**
14 Q. Did that principle also apply to just
15 continuing with the practice and having no policy at
16 all on School Board prayer?
17 **A. I believe that in the circumstances that we**
18 **were facing ourselves with, that having no policy at**
19 **all created an even bigger issue.**
20 Q. Let me ask you this, did the policy as
21 adopted in Hattier Exhibit 9 change the practice of
22 the Board in any way with respect to its offering of
23 prayers to open School Board meetings?
24 **A. Yes, sir, I believe it did.**

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1 Q. How did it change the practice?
2 **A. Previous time periods I seem to recall one**
3 **or two individuals opening with prayer on somewhat**
4 **regular basis, at least for the parts that I paid**
5 **attention to. I believe that as a result of this we**
6 **have included a lot more people and rotated it**
7 **around on a more regular basis than we certainly did**
8 **prior to that.**
9 Q. Was that a change that you agreed with?
10 **A. Yes, sir.**
11 Q. Did you do view that as beneficial?
12 **A. Yes, sir.**
13 Q. Why did you view it as beneficial?
14 **A. Because it included more people's opinion.**
15 Q. Any why is it useful to include more
16 people's opinions?
17 **A. If we are representing a broad**
18 **cross-section of the public from five different**
19 **areas with ten different individuals, it would be**
20 **nice if we all had an opportunity to be heard.**
21 Q. Why wouldn't that same policy as you
22 suggest that you should have prayers from a broader
23 spectrum than merely the ten Board members?
24 **A. Because if my reading of the law is**

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1 correct, and again I'm not an attorney, but if my
2 reading of the law is correct, if we invite outside
3 people to come in you actually increase the
4 likelihood of there being a problem. In some of the
5 cases that I read it seemed to me that it just
6 seemed to increase the potential for problems.

7 Q. All right coming back to the issue of the
8 discussion of the Rutherford draft, Hattier Exhibit
9 12, I'm going to try to help you, to quote Jerry
10 McGuire have you help me, in figuring out when this
11 policy was first discussed.

12 MR. ALLINGHAM: I want to mark as
13 Hattier Exhibit 13 a document bearing Bates
14 number BPD1291 and 1292.

15 (WHEREUPON Hattier Exhibit 13 was
16 marked for identification)

17 Q. Dr. Hattier, you've been in litigation
18 before so you may know, but I always explain to
19 people, redacted is a lawyer's word meant to
20 indicate that some material has been taken out or
21 masked from the document.

22 A. Correct.

23 Q. But some portion of the minutes of a
24 special Board meeting on August 23 executive session

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1 is reflected here. Do you recall that on the day
2 before the have large meeting on August 24th the
3 Board held a special meeting at the Sussex Central
4 Middle School Library?

5 A. Yes.

6 Q. Do you recall for what purpose that special
7 meeting was called?

8 A. If I'm not mistaken it was called to
9 discuss, geez, I believe it was called to discuss
10 the entire issue of the prayer at the graduation as
11 well as potential prayers before School Board
12 meeting. That's what I seem to remember.

13 Q. Sort of the global prayer in school issue?

14 A. Yes, sir, it was a global in my mind it was
15 a global conversation, that's a good word.

16 MR. ALLINGHAM: Okay, off the
17 record for a minute.

18 MS. DUPHILY: We are going off the
19 record at approximately 2:07 p.m..

20 (WHEREUPON a brief recess was
21 taken)

22 MS. DUPHILY: Back on the
23 record at approximately 2:11 p.m..

24 MR. ALLINGHAM: Let's mark as

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1 Hattier Exhibit 14 a document bearing Bates
2 numbers IRSD45360 through 5362.

3 (WHEREUPON Hattier Exhibit 14 was
4 marked for identification.)

5 Q. I'm trying to just put together how this
6 worked, Dr. Hattier. So, let me start with Hattier
7 Exhibit 14 which is, I believe the minutes of the
8 special meeting on Monday August 23, is that
9 correct?

10 A. Yes, sir, that's what it appears to be.

11 Q. And you are reflected as present both on
12 the roll call which is the last page and I think
13 also on the roll call reflection on the second page
14 of the minutes?

15 A. Correct, sir.

16 Q. The meeting was called to order at 7
17 o'clock and moved immediately on a motion by
18 Mr. Helms, seconded by you to go into executive
19 session to seek advice from our legal counsel
20 regarding potential litigation. And right under
21 that are A and B, strategy session to discuss
22 collective bargaining, pending or potential
23 litigation and such other business as may properly
24 be discussed in an executive session. Am I correct

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1 that that is the Board's record of the reasons why
2 it went into executive session?

3 A. Yes, sir.

4 Q. And in this case there was not a collective
5 bargaining it was pending potential litigation?

6 A. That's what I'm going to recollect. I a
7 lot of times we go into executive session, other
8 things like the pending, excuse me, the collective
9 bargaining will be thrown in.

10 Q. Okay. The other visitors and staff in
11 attendance is Lois Hobbs, Earl Savage, Janet Hearn,
12 Patrick Miller and James Griffin. Is the legal
13 counsel from whom you — that was going to be a very
14 bad question. Is the legal counsel that you were
15 going to seek advice from in executive session,
16 Mr. Griffin?

17 A. That's what it looks like yes, sir.

18 Q. Now let's go to the executive session
19 minutes?

20 A. Okay.

21 Q. The Board went into executive session at
22 7:01 according to the regular minutes and came out
23 of executive session at 11:15. So, a little over
24 four hours of executive session on this topic?

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1 **A. Uh-hum.**
2 **Q.** My question to you is, is this to your
3 recollection the first time that the Board prayer
4 issue was discussed at the Indian River School
5 District Board?
6 **A. No.**
7 **Q.** Okay. Do you recall a previous time when
8 it was discussed?
9 **A. Yes, sir.**
10 **Q.** When was that?
11 **A. It was first discussed when Mrs. Dobrich**
12 **came before the Board, I believe it would have been**
13 **in the July meeting, and we did at that time, we had**
14 **received some material from our attorney and it had**
15 **arrived the day that she arrived there. We tabled**
16 **the discussion for the executive session time**
17 **period. You know we had a lot of other things to**
18 **discuss that night as well.**
19 **Q.** Let's see if can get that?
20 **A. Okay.**
21 **MR. ALLINGHAM:** Let's mark as
22 **Hattier Exhibit 15 a document bearing Bates**
23 **numbers BPD10 through 18.**
24 **(WHEREUPON Hattier Exhibit 15 was**

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1 marked for identification.)
2 **Q.** First of all, can you identify Exhibit 15
3 as the minutes of the June 15, 2004 meeting?
4 **A. Yes, sir I believe I can.**
5 **Q.** On page two page you will see under the
6 public comments section?
7 **A. Yes, sir.**
8 **Q.** Mona Dobrich, Mrs. Dobrich a parent of the
9 Jewish faith expressed concern about prayers at
10 School District events. She asked that the Board
11 consider using a nondenominational prayer that would
12 be appropriate for all faiths at events such as
13 graduations, et cetera?
14 **A. Yes, sir.**
15 **Q.** Did you have an opinion, either supporting
16 or opposing the request that Mrs. Dobrich made at
17 the June 15th meeting as set forth in the minutes?
18 **A. I had no disagreement with what her request**
19 **was.**
20 **Q.** And when you say that you had no
21 disagreement, does that mean that you would believe
22 it to be appropriate that the Board use a
23 nondenominational prayer that would be appropriate
24 for all faiths at events such as graduations, et

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1 cetera?
2 **A. At that time I had just heard about the**
3 **entire event because I was unable to attend the**
4 **Sussex Central High School graduation because of**
5 **other issues with my children, and I was not 100**
6 **percent certain what the other gentleman, what the**
7 **preacher or pastor had said at that particular time**
8 **period. It had essentially just come to my**
9 **attention within anywhere between a week or the day**
10 **before, I don't remember that.**
11 **All right, so if the prayer was overly**
12 **preachy I would not have had a problem with toning**
13 **it down. I don't know. I would certainly want to**
14 **have been supportive of Mrs. Dobrich's request.**
15 **Q.** If you look you at the next page, under
16 knew business, you will see a reference to
17 graduation ceremonies which reads, Ms. Hobbs
18 provided the Board with information regarding school
19 prayer from Mr. Griffin?
20 **A. Yes.**
21 **Q.** She apologized for the lateness of
22 providing the material however Mr. Griffin was out
23 of town due to a death in his family. It was moved
24 by Mr. Helms seconded by Mr. Cohee to table this

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1 item until the next regular Board meeting. The
2 passed unanimously ten zero.
3 **A. Yes, sir.**
4 **Q.** And I assume that you were one of those ten
5 votes?
6 **A. Yes, sir.**
7 **Q.** So, am I correct that at the June 15
8 meeting the issue was raised by Mrs. Dobrich but
9 there was no substantive discussion by the Board?
10 **A. No. As I recall it -- let me take back the**
11 **word no because I think we are using the work**
12 **incorrectly. I believe that Mrs. Dobrich had either**
13 **talked to or confronted, made a phone call to Mrs.**
14 **Hobbs in some manner and had asked about the, you**
15 **know, what the prayer issue had been.**
16 **Mrs. Hobbs in accordance with what we would**
17 **request her to do, placed in on the Board agenda for**
18 **us to discuss. Mrs. Dobrich would have talked to**
19 **Mrs. Hobbs some time immediately after the ceremony**
20 **at some time, in there. I don't know what the time**
21 **frame was and Mrs. Hobbs went ahead and requested**
22 **information from Mr. Griffin, and then placed it on**
23 **the Board agenda for us to discuss.**
24 **So, whether Mrs. Dobrich would have**

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1 **attended or not it was already on the meeting's**
2 **agenda for that particular night.**
3 Q. Oh, yes, sorry. I was probably unclear?
4 A. **okay, sorry.**
5 Q. Is it correct forget the Dobrich part of the
6 question that was just a preliminary, is it correct
7 that the Board did not substantively discuss this
8 issue at the June 15 meeting but rather tabled it to
9 be addressed at the July meeting?
10 A. **I'm think for the most part we did discuss**
11 **it at the July meeting, but I believe there was some**
12 **incidental discussion on it in terms of some of the**
13 **materials that were presented. Mr. Griffin had, I**
14 **think it was from Mr. Griffin, he had given us many**
15 **pages worth of reading to do and the way the evening**
16 **goes you do not have, you stated yourself, sir you**
17 **were on a school board, things start moving and you**
18 **don't have five or ten minutes, people read at**
19 **different rates, for us to actually read it and then**
20 **to be able to discuss it.**
21 **This would have given us time to read the**
22 **material and to be able to comment on it in an**
23 **intelligent manner.**
24 Q. And was the materials that Mr. Griffin

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1 provided to the Board among the materials that you
2 as a Board member considered in your ultimate vote
3 to adopt the School Board Prayer BDA.1?
4 A. **Yes, sir.**
5 MR. ALLINGHAM: Okay, now let me
6 mark as Hattier Exhibit 16 a document
7 bearing Bates number BPD32 through 40.
8 (WHEREUPON Hattier Exhibit 16 was
9 marked for identification.)
10 Q. And again can you confirm for me that these
11 are the minutes of the July 27, 2004 meeting?
12 A. **Yes, sir, I will do that.**
13 Q. And as the roll call section on the first
14 page reflects you were in attendance at this
15 meeting?
16 A. **Yes, sir, I was.**
17 Q. If you look in the public comments section
18 on page two?
19 A. **Uh-hum.**
20 Q. You will see that 12 people are reflected
21 as having spoken regarding the districts's practice
22 of holding prayers at school sponsored events
23 including graduation ceremonies?
24 A. **Yes, sir.**

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1 Q. I'm assuming that you believe that that's
2 accurate reflection of the number of people who
3 spoke?
4 A. **Yes, sir.**
5 Q. All right, and it also said that comments
6 were equally made in favor of continuing and
7 discontinuing the present practice, do you see that?
8 A. **Yes, sir.**
9 Q. Do you believe that that's an accurate
10 reflection of what occurred?
11 A. **If that's what it says I'm going to go with**
12 **that.**
13 Q. Under old business, under graduation
14 ceremonies it was moved by Mr. Helms seconded by
15 Mr. Code to table graduation ceremonies until after
16 executive session, and the motion passed unanimously
17 seven zero. Why did you vote to table the
18 graduation ceremonies issue until after you had gone
19 into executive session, you Donald Hattier?
20 A. **I believe that we still had a lot of issues**
21 **that we needed to cover before there was much that**
22 **we could do in public.**
23 Q. What were those issues?
24 A. **In terms of the adoption, should we do it,**

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1 **should we not do it. That's pretty general.**
2 Q. I notice that there is no reference to the
3 rationale for going into executive session. At the
4 executive session portion of the minutes which you
5 will find at BPD39, which is the eighth page of the
6 minutes?
7 A. **Okay.**
8 Q. Four rationals are offered. One has to do
9 with personnel, one has to do with strategy session
10 to discuss collective bargaining pending a potential
11 litigation, one is to conduct a hearing regarding
12 employee or student discipline and then there is the
13 catch all, D.
14 What was it about graduation ceremonies or
15 discussion of graduation ceremonies that you felt
16 justified going into executive session?
17 A. **To the best of my knowledge it would have**
18 **to do with the contentious nature of the subject, if**
19 **we had discussed it in a open meeting. Certainly**
20 **with a lot of the people present. At that**
21 **particular time I don't recall that we had a clear**
22 **understanding of what it is that we wanted to do,**
23 **and I felt that as a Board, speaking for myself,**
24 **that we needed to discuss it further, and how are we**

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1 going to approach it.
2 In other words, what is the approach that
3 should be taken. And I believe that we rightly
4 referred it to the policy committee because that's
5 where it should have gone.
6 Q. Okay, you mentioned two things, one that it
7 was a contentious subject and the other that you
8 didn't have a consensus yet on what to do?
9 A. That's my recollection, yes sir.
10 Q. During the discussion did you discuss
11 potential litigation having to do with the
12 graduation ceremony?
13 A. More than likely.
14 Q. Did you discuss only the potential
15 litigation having to do with the graduation
16 ceremonies.
17 A. No. We had a lot of other issues to
18 discuss in executive sessions, this particular one
19 as we do in most.
20 Q. Did you receive any presentations from any
21 lawyers during the executive session?
22 A. I don't remember.
23 Q. I'm looking at the lengthy list of other
24 visitors and staff in attendance?

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1 A. Okay.
2 Q. And I don't --
3 A. What page are you on, sir?
4 Q. It's the first and second page, carry over
5 to the second page. I clearly don't know everybody
6 but I don't see anyone that I can identify as a
7 lawyer there?
8 A. Sorry, I can't either.
9 Q. Okay. You went into executive session at
10 10:20 and reconvened at 12:10 a.m., do you know
11 whether there was any other matter discussed, other
12 than the graduation ceremony?
13 A. Yes, sir.
14 Q. What was that?
15 A. I'm almost 100 percent positive that we had
16 disciplinary issues to discuss with the kids, or
17 about some of our children who needed the
18 disciplining referral, drug therapy, whatever and
19 then I believe there was something to do also with
20 several employees. I mean I'm doing this off the
21 top of my head. Student hearings, there was the
22 secretarial contract which was discussed we had a
23 discussion on the confidential secretaries, and then
24 we would have also have had a conversation about the

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1 personnel agenda and addendum.
2 And you had asked earlier what we do in
3 terms of the board, at each executive session we
4 have, we are given a list of individuals who are
5 hired, fired promoted, moved around, transferred,
6 whatever and we all take a look at who is being
7 moved, et cetera and then we vote on it.
8 Q. Okay. After you came out of executive
9 session on page nine of the minutes at the top of
10 the page you'll see that it was moved by Mr. Helms,
11 seconded by you to refer the graduation ceremonies
12 matter to the policy committee?
13 A. Correct.
14 Q. During the executive session was there
15 substantive discussion of the issue, or did someone
16 propose look isn't this a policy question we ought
17 to refer it to the policy committee?
18 A. It's probably both. I mean in terms of an
19 executive session we went at ten something and came
20 out at 12:10, that's actually a short meeting.
21 I mean there is sometimes we have been in
22 there three and half, four hours, so if we were in
23 there for an hour or so, all things considered
24 that's a short meeting.

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1 Q. Well, my question is other than discussion
2 of referring the matter to the policy committee what
3 was said during the executive session?
4 A. My guess would be, and that's what it is is
5 a guess, is that we had some of the materials from
6 Mr. Griffin that we would have discussed in terms of
7 what is some of the applicable case law, what is it
8 we want to do about it and how do we want to
9 approach it.
10 Q. Let me ask you this question, we have a
11 June 20 fairly brief consideration but you have the
12 material from Mr. Griffin you have a July 27th
13 discussion, you have an August 23 discussion, you
14 have the big meeting on August 24; is it fair to say
15 that at least in casting your vote to approve the
16 School Board Prayer Policy you took into account all
17 of the matters and considerations that were brought
18 to your attention during the meetings that preceded
19 present --
20 A. I would like to hope so.
21 Q. When you say you would like to hope so --
22 A. Yes, sir, it's a straight, yes, sir, I
23 apologize.
24 Q. All right, so now to come back to Exhibit

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1 13. This is an executive session that lasted about
2 four hours and 15 minutes. It doesn't appear from
3 the minutes that anything was discussed except the
4 global prayer issue?
5 **A. Uh-hum.**
6 Q. The only unredacted portion of that four
7 hour 15 minute discussion is reflected at the bottom
8 on the first page. It says during, the discussion
9 of this issue several Board members expressed that
10 their constituents do not want the Board to change
11 its practice of opening the meetings with a prayer.
12 It was not felt that a decision could be made this
13 evening regarding whether or not to change our past
14 practice.
15 So, first of all what I would like you to
16 tell me is which Board members expressed that their
17 constituents did not want the Board to change its
18 practice?
19 **A. To the best of my knowledge it was all of**
20 **us.**
21 Q. Well, the minutes say several the Board
22 members, which doesn't sound like all?
23 **A. Understood.**
24 Q. You believe every single Board member said

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1 that?
2 **A. To the best of my knowledge. I don't**
3 **believe we had any dissention at that time. I don't**
4 **believe that.**
5 Q. So, at the August 23 meeting as well as you
6 can recall every Board member who was present, which
7 includes I believe every Board member, yes --
8 **A. Ten zip.**
9 Q. Expressed the view that his or her
10 constituents did not want the Board to change its
11 existent practice?
12 **A. That would be my belief, yes sir.**
13 Q. And in expressing that view did the Board
14 members say my constituents unanimously don't want
15 the Boar to changes its practice, a majority of my
16 constituents don't want the Board to change its
17 practice, the ones that I happened to talk to don't
18 want the Board to change it's practice?
19 **A. I can comment on those that talked to me**
20 **and in which case it would have been a majority,**
21 **majority who wanted us to continue what we were**
22 **doing. I cannot comment on what the other gentlemen**
23 **and ladies were thinking or going through.**
24 Q. This is one of those things where it's hard

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1 sometimes to keep a close eye on what we are saying.
2 So, in expressions your view that your constituents
3 did not want the Board to change it's practice, what
4 you were basing that expression on was that a
5 majority of your constituents had said that?
6 **A. Yes, sir.**
7 Q. A majority of the constituents that you had
8 talked to?
9 **A. A majority of the constituents that I had**
10 **talked to, a majority of the e-mails, not so much**
11 **e-mails but the newspaper editorials, what we were**
12 **hearing from my wife's church, what we were hearing**
13 **from other people's churches.**
14 **I have a significant number of pastors in**
15 **my practice and a lot of people would you know just**
16 **in and state what their opinions were.**
17 Q. Would you read that answer back, please?
18 (WHEREUPON the preceding
19 answer was read back by the
20 reporter)
21 Q. Okay, I want to explore those categories
22 for just a minute. The first one was the majority
23 of the people that you talked to?
24 **A. Correct.**

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1 Q. In advance of the August 23 meeting can you
2 give me an estimate of how many people you talked to
3 among your constituents on this issue?
4 **A. No, a raw number, no. I mean people --**
5 Q. Hundreds, dozens?
6 **A. Dozens at the minimum.**
7 Q. Dozens at the minimum?
8 **A. I'm an active --**
9 Q. As many as 100?
10 **A. More than likely.**
11 Q. And how is it that the issue came to those
12 people's, to those hundred people's attention?
13 **A. This was already in the newspapers at that**
14 **particular time and it was also on our local talk**
15 **show station and there were already starting to**
16 **appear a significant number of editorials in the**
17 **local Wave, the Coastal Point, I believe the Sussex**
18 **Countian and there is one other one, I the Sussex**
19 **Post we have in our area, too.**
20 Q. You talked about the majority of e-mails?
21 **A. I don't get a lot of e-mails on things like**
22 **this from my constituents because frankly I don't**
23 **publish my e-mail address. I have a spam problem or**
24 **did at the time like a lot of other people have had**

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1 and I see so many people in public life that for
2 them to e-mail me on these things is not a routine
3 thing.
4 Q. All right, newspaper editorials, do you
5 mean editorials or letters to the editor?
6 A. Letters to the editor, my mistake.
7 Q. And information you got from your wife's
8 church, how did you get that information?
9 A. My wife is very active in her church. I
10 talk to the pastor from time to time. I've
11 supported the youth league over there since that's
12 where my kids go and they've called and offered
13 their support in what we are doing. There are other
14 pastors as well that I know within the community who
15 called.
16 Q. That's a separate category. So, on your
17 wife's church, you said they've called and offered
18 support for what you are doing?
19 A. Yes.
20 Q. Who is they?
21 A. They would be whoever the people are that
22 attend the church, as well as the pastor, pastoral
23 staffs.
24 Q. And this is up to the August 23 meeting.

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1 What was it that you were doing that they offered
2 support for?
3 A. They basically wanted us to continue with
4 the practice of opening the Board meetings with
5 prayer.
6 Q. Anybody say why?
7 A. Most people for the same reason that I have
8 stated it, it's part of American historical movement
9 and it is part of the fabric and tradition of our
10 area for a very long time period. Some people were
11 just flat out offended that just one person could
12 change the law entirely. You know for the most part
13 people believe that it is the right thing to do.
14 Q. Did you assure them that one person could
15 not change the law?
16 A. No, sir, I can't do that. I don't believe
17 that, either.
18 Q. Who was the one person who was threatening
19 to changes the law?
20 A. Mrs. Dobrich.
21 Q. Don't you think that if Mrs. Dobrich is
22 successful in this litigation she would have been
23 successful in enforcing the existing law?
24 A. That's assuming that it is the existing

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1 law. That's what we are doing right now.
2 Q. Well, if she is successful presumably it
3 will be the existing law?
4 A. Then that's what it would be.
5 Q. The pastors in your in your practice whom
6 you spoke to?
7 A. Yes, sir.
8 Q. How many pastors did you speak to, before
9 August 23rd?
10 A. Six to ten.
11 Q. How many people from your wife's church?
12 A. A dozen perhaps.
13 Q. How about people calling from other
14 people's churches?
15 A. Perhaps another dozen.
16 Q. And then people who just contacted you, how
17 many of those did you have, who don't fall into the
18 other categories?
19 A. We can probably throw another dozen or so
20 into that. This was obviously a fairly hot issue in
21 the community.
22 Q. All right, on this very hot issue, if add
23 them all up you had maybe 200 people who contacted
24 you?

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1 A. That's a reasonable number.
2 Q. And how many of those supported what you
3 were doing?
4 A. The vast majority.
5 Q. How many of those said we kind of agree
6 with Mrs. Dobrich?
7 A. A few.
8 Q. Did it occur to you that the categories of
9 constituents from whom you were hearing were perhaps
10 likely to be biased in favor of continuing what you
11 were doing?
12 A. I believe that's probably true in any
13 political area, and yes that's a fair statement.
14 Q. In expressing your view that your
15 constituents did not want the Board to change it's
16 practice what effort did you make to determine the
17 attitude of the people who hadn't gone out of their
18 way to contact you who had this, as you say built-in
19 bias?
20 A. As I stated to you earlier, I also do what
21 I personally believe to be right, so I did not make
22 an extra effort to seek those out.
23 Q. Well, did you try to be accurate in what
24 you tell your fellow Board members, don't you?

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1 **A. Yes.**

2 Q. So, did you tell your fellow Board members
3 that your constituents did not want the Board to
4 change its practice of opening the meetings with a
5 prayer?

6 **A. Yes.**

7 Q. Okay. You spoke to a maximum of 200 of
8 your constituents?

9 **A. We spoke to approximately 200 or**
10 **thereabouts.**

11 Q. 200 of your constituents. It seems quite
12 clear to me, although you haven't been able to tell
13 me how many residents there are in your district,
14 there are more than 400, does that seem fair?

15 **A. That seems eminently fair.**

16 Q. So, to come back to my question is it
17 correct that you made no effort to find out the
18 views of the people who had not sought you out on
19 this issue?

20 **A. That's probably a fair statement.**

21 Q. Okay. Now when every other Board member
22 expressed his or her view that his or her
23 constituents did not want the Board to change its
24 practice, did they tell you whether they meant the

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1 minutes of executive session?

2 **A. I believe we also discussed some of the**
3 **issues regarding having prayer at a graduation and**
4 **prayer at things like school sponsored dinners or**
5 **athletic sponsored dinners, and that sort of thing.**

6 Q. And did the Board members also express
7 their views that their constituents wanted all of
8 those practices to continue as well?

9 **A. Yes.**

10 Q. Okay. Ultimately the Board adopted a
11 policy that prohibits prayers at many of those
12 functions, is that right?

13 **A. Yes, that is correct.**

14 Q. And so in those instances the Board chose
15 not to follow the wishes of its constituents?

16 **A. On those issues the Board chose to follow**
17 **what were the federal guidelines which were quite**
18 **specific regarding those types of instances. And**
19 **that's essentially what we incorporated into our**
20 **policies.**

21 Q. Well, in adopting, I'm only speaking about
22 the School Board Prayer Policy now?

23 **A. Okay.**

24 Q. Unless it comes to contrast that with other

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1 majority of their constituents, all of their
2 constituents whom they spoke to or did they not
3 specify?

4 **A. I would say that it would be the majority**
5 **of the folks that they had talked to.**

6 Q. Okay, and is that what they told you at the
7 Board meeting?

8 **A. That is what I recall.**

9 Q. Okay, so it would be fair for me to
10 understand that what the Board members, what you
11 understood all of the Board members to be saying was
12 that a majority of their constituents who had
13 contacted them did not want their Board to change
14 its practice of opening its meetings with a prayer?

15 **A. That's a fair statement.**

16 Q. Did anybody ask what efforts had been made
17 to determine the views of the people who had not
18 contacted them?

19 **A. I don't recall any such question being**
20 **asked.**

21 Q. In addition to this expression that their
22 constituents did not want the Board to change its
23 practice of opening the meetings with a prayer, what
24 else was discussed during this four hour and 15

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1 policies, but in adopting the School Board Prayer
2 Policy, first question, did you Donald Hattier
3 consider what your constituents wanted in terms of
4 continuing the Board practice of opening its meeting
5 with a prayer?

6 **A. No.**

7 Q. Then why did you bother to tell your Board
8 members what they wanted?

9 **A. Because that's what was asked.**

10 Q. Okay. Did any other Board member at any
11 time during consideration of the School Board Prayer
12 Policy express the view that that Board member was
13 taking into consideration what his or her
14 constituents wanted?

15 **A. I'm speculating from what I recall, I'd**
16 **have to say yes. I would have to state it as a**
17 **matter of fact, no I can't do that.**

18 Q. Which Board members do you believe said
19 such a thing, expressed the view that they were
20 taking into consideration what their constituents
21 wanted?

22 **A. Possibly Reggie Helms, who else was on at**
23 **that particular point. Reggie comes to mind the**
24 **most.**

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1 Q. What did Mr. Helms say in that respect?
2 **A. The fact that most of his constituents**
3 **requested that we leave things the way it has been**
4 **for a very long time period.**
5 Q. Did anybody respond we'd really love to
6 take into consideration what the law is?
7 **A. I believe the general consideration was**
8 **that since we are legislative body that we come**
9 **under Marsh and therefor we are under the law. And**
10 **again I'm not an attorney, I'm a lay person, but**
11 **that is how I would read it.**
12 Q. Now, as of August 23 there had been no
13 opinion from Judge Faman?
14 **A. That is correct.**
15 Q. Also as of October 19, 2004 when the policy
16 was adopted. So describe for me what consideration
17 was given or what basis was given for the conclusion
18 that the Board was a legislative body that fell
19 under Marsh?
20 **A. We are elected officials, we set policy, we**
21 **set tax rates, we set dates and from what we could**
22 **tell one of our Board members, and I do not recall**
23 **who, had pulled out the Delaware Code Book and had**
24 **looked this up and read it to us. I do not remember**

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1 **who it was, and if in my opinion that we came under**
2 **that as a legislative body and therefore we were**
3 **under Marsh.**
4 Q. The Delaware Code Book said you were a
5 legislative body that falls under Marsh?
6 **A. If we are a legislative body why would we**
7 **not come under Marsh.**
8 Q. Did you read the Marsh opinion?
9 **A. Yes.**
10 Q. You understand that there is a factually
11 intensive analysis of what the board did, what
12 the --
13 **A. As much as a lay person I can understand,**
14 **yes, okay, and that's again where some comments were**
15 **made that this has been a continuing part of the**
16 **fabric of the American way of for the last 200 plus**
17 **years.**
18 Q. You seem like a person with genuine
19 curiosity about these issues?
20 **A. Absolutely.**
21 Q. Have you read the opinions that have been
22 issued on the question of School Board prayer?
23 **A. Which opinions are you talking about**
24 **because I have read a lot of them at this particular**

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1 **point but again I'm not an attorney and I don't have**
2 **the kind of mind that stores that sort of**
3 **information. But I have read as many of them as I**
4 **could find.**
5 Q. I could give you names of cases, but since
6 I don't have that kind of mind either I can only
7 give you a few and they'd probably be the ones that
8 come down on my side of the issue.
9 **A. Probably.**
10 Q. But let me just ask you based on your
11 curiosity and investigation of this issue, would you
12 agree with me that the issue of whether a School
13 Board is treated as a legislative body is a
14 factually intensive issue?
15 **A. Yes, it is.**
16 MR. GOSSELIN: Objection.
17 **A. I'm also aware that various school boards**
18 **are constituted in different ways in certain states.**
19 **Some of them are appointed, some of them are**
20 **non-elected, not all of them set tax rates, not all**
21 **of them set legislative issues, but I do believe**
22 **under the definition that is used here in Delaware**
23 **we did come under that, and I would have to say that**
24 **it might be Delaware specific.**

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1 Q. The decision of the Board let me start
2 again. Did the Board arrive at a consensus that it
3 was a legislative body?
4 **A. I believe we did.**
5 Q. Do you know when it arrived at that
6 consensus?
7 **A. No, sir, I do not. Somewhere through all**
8 **of this.**
9 Q. Well, there was this long four hour
10 meeting, did the Board arrive at it at that
11 executive session meeting or was it later than that?
12 **A. I'm going to make a guess that we had**
13 **arrived as a body by the time that that meeting was**
14 **over that that is where we were.**
15 Q. Okay, the conclusion at the, and the only
16 part of this executive session minutes that I have,
17 says it was not felt that a decision could be made
18 there evening regarding whether or not to change our
19 past practice.
20 My question to you is, if you had arrived
21 at a consensus that the Board was a legislative
22 body, and if it was a legislative body it fell under
23 Marsh, and if it fell under Marsh it could open its
24 meetings with a prayer, and all of your constituents

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1 wanted you to open your meetings with a prayer, why
2 was it that it was not felt by the Board presumably
3 that a decision could be made this evening regarding
4 whether or not to change our past practice?
5 **A. I believe that was because as lay people**
6 **we were looking at that as an opinion rather than a**
7 **statement of fact and that we probably still needed**
8 **more guidance on the issue in order to proceed.**
9 Q. Okay. So, as lay people you arrived at a
10 consensus but you wanted more information?
11 **A. Yes, sir.**
12 Q. Where did you think that you were going to
13 get that information?
14 **A. From an attorney.**
15 Q. Was there an attorney present during this
16 four hour 15 minute executive session?
17 **A. If I remember right this may have been the**
18 **time period where Mr. Neuberger talked to us. It**
19 **may have been, okay, I don't specifically recall.**
20 **It was tie either some time in August or possibly**
21 **some time in September when he talked to us. I do**
22 **remember one very long meeting that we had.**
23 Q. If you look at the minutes of August 23rd,
24 which is Exhibit 14?

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1 **A. Right.**
2 Q. You will see that under other visitors and
3 staff in attendance, Mr. Neuberger is not listed but
4 Mr. Griffin is?
5 **A. August which date, sir?**
6 Q. August 23, it's Exhibit 14. Not the
7 executive committee, the regular meeting. If you
8 look at the stickers you will see the exhibit
9 numbers?
10 **A. Well, then that wasn't the meeting he was**
11 **here. Okay then he wasn't here that meeting then it**
12 **means that we met some time in September.**
13 Q. The person who was present at that meeting
14 was Mr. Griffin, is that correct?
15 **A. Correct.**
16 Q. And the Board had an opportunity to discuss
17 with Mr. Griffin whether the Board was a legislative
18 body?
19 **A. Yes, sir.**
20 Q. Did the Board discuss with Mr. Griffin
21 whether the Board was a legislative body?
22 **A. I believe we probably did.**
23 Q. So, you had already gotten advice from a
24 lawyer about whether the Board was an executive body

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1 as of the time that you concluded that you couldn't
2 make a decision?
3 **A. You know, as a I stated to you earlier, sir**
4 **Mr. Griffin is a general attorney and for what we**
5 **were discussing and with the potential for**
6 **litigation we felt that it would be better to pick a**
7 **different attorney for another opinion.**
8 **In my opinion Mr. Griffin, and he is a find**
9 **attorney, Mr. Griffin has served our district**
10 **extremely well over the years, but he is a general**
11 **attorney and his issues do not run into the First**
12 **Amendment as a general rule. He would do contract**
13 **law he would do personal issues, but, you know,**
14 **First Amendment issues are not the sort of thing**
15 **that routinely come across his desk.**
16 Q. So, you wanted to consult a First Amendment
17 specialist?
18 **A. That was my general feeling, yes, sir.**
19 Q. Was that the consensus of the Board by the
20 end of the August 23 executive session?
21 **A. I would have to speculate that the answer**
22 **is yes.**
23 Q. And did somebody say in words or substance
24 we better get ourselves a First Amendment Specialist

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1 to test our consensus?
2 **A. It would be the appropriate thing to do.**
3 Q. And in words or substance was that kind of
4 what the Board said --
5 **A. Something along those -- yeah, that's**
6 **actually, yes sir.**
7 Q. Did anyone say I wonder who we can get?
8 **A. Yes, sir.**
9 Q. And Who said that?
10 **A. Virtually all of us.**
11 Q. Did anyone answer who you could get?
12 **A. Yes, we discussed the Alliance Defense**
13 **Fund, Liberty Counsel, Pacifica, we discussed**
14 **Rutherford. We discussed anybody who could**
15 **potentially do this pro bono.**
16 Q. Did you discuss the ACLU, they are big
17 First Amendment folks?
18 **A. The ACLU has a tendency to come down**
19 **against what we wanted to do so, no they were not**
20 **discussed other than as potential adversaries.**
21 Q. The roster of people that you discussed,
22 seems to me, and correct me if I am wrong, to be
23 identical to the roster of organizations that you
24 discussed and described as supportive of more

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1 traditional American values?
2 **A. That is correct sir, that is a fair**
3 **statement.**
4 Q. So that in looking for somebody to give you
5 advice on whether the Board was a legislative body
6 you identified legal organizations that were as you
7 understood it likely to be in line with more
8 traditional American values?
9 MR. GOSSELIN: Objection.
10 Q. Correct?
11 **A. As I understand it that is correct.**
12 Q. That is what everybody wanted to do, right?
13 **A. Yes, sir.**
14 Q. Did you thank Mr. Griffin for his counsel
15 and tell him that you wouldn't be needing his advice
16 anymore in connection with these issues?
17 **A. I'm quite certain that we thanked him. In**
18 **terms of needing his advice, I don't know what to**
19 **say about that.**
20 Q. And who was charged with contacting
21 Pacifica, Rutherford, ADF and so forth?
22 **A. I believe Mr. Helms indicated that he had**
23 **talked to the Rutherford. I may have contacted them**
24 **on about the same time period. Reggie took the lead**

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1 **on that. The folks that I had contacted as I stated**
2 **were ADF but I turned that over to the school system**
3 **rather than me pursuing it myself. With my job**
4 **responsibilities and family responsibilities I**
5 **cannot handle that kind of a load.**
6 Q. The load of contacting the ADF and finding
7 out whether they could advise you on this issue?
8 **A. Yeah, and making all the necessary contacts**
9 **and setting up their meetings and sending the**
10 **materials, et cetera.**
11 Q. All right, so you turned over to, you said
12 the school system, I assume you mean the district?
13 **A. The district, yes, sir.**
14 Q. You turned over to the district the task of
15 contacting ADF, Mr. Helms took the lead in
16 contacting the Rutherford?
17 **A. Yes, sir.**
18 Q. And you mentioned a couple of other legal
19 organizations, did anybody contact them as well?
20 **A. I don't remember.**
21 Q. So, at the end of the day, the Board
22 concluded not to hire anybody who was a specialist
23 in the First Amendment, who was a specialist in the
24 First Amendment to advise you on whether the Board

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1 was a legislative body, is that right?
2 MR. GOSSELIN: Objection.
3 **A. If you recall we also had the issue of**
4 **insurance coverage and I don't remember at that time**
5 **whether our insurance company had gotten back to us**
6 **yet or not in terms of determining how they would**
7 **want to approach the issue because if we are being**
8 **sued we have an obligation to work with them as**
9 **well. And I'm not quite sure whether they had**
10 **responded back to us at that point what their**
11 **position was or how they would approach it, I don't**
12 **remember that.**
13 Q. That's helpful, but my question was at the
14 end of the day you never did retain an organization
15 that was a First Amendment specialist to provide you
16 with an opinion on whether the Board was a
17 legislative body?
18 **A. You mean in terms of --**
19 MR. GOSSELIN: Objection.
20 **A. -- of the overall suit itself?**
21 Q. Correct?
22 **A. No, we did not.**
23 Q. And you personally didn't retain a First
24 Amendment specialist?

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1 **A. No, I did not.**
2 Q. At the special meeting on August 23 was
3 there any discussion of the fact that there was
4 going to be a regular meeting on August 24?
5 **A. Yes, sir.**
6 Q. And tell me what the substance of that
7 discussion was?
8 **A. That we were going to discuss it on August**
9 **24th?**
10 Q. Was there anything that you would be able
11 to discuss on August 24th that you couldn't have
12 discussed on August 23rd?
13 **A. Yes.**
14 Q. What was that?
15 **A. Because if you figure that we blocked out**
16 **four hours to simply discuss all of this in one**
17 **meeting that would have put us home Wednesday tome**
18 **time at 3:30 or 4 o'clock in the morning and since**
19 **virtually all School Board members are volunteers**
20 **non-paid and we have other jobs we would not be able**
21 **to discuss the issue all in one shot.**
22 **This was a way for to us get together and**
23 **discuss the issue and then still be able to do the**
24 **School Board functions the next day. That's how I**

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1 **looked at looked it.**
2 Q. Sure, but as you said the reason that you
3 couldn't make a decision on August 23rd was that you
4 wanted to get the advice of a First Amendment
5 specialist?
6 **A. Right.**
7 Q. Other than Mr. Griffin and different from
8 Mr. Griffin on the issue of whether the Board was a
9 legislative body or not. You weren't going to have
10 that by August 24th were you?
11 **A. No, I don't believe we were.**
12 Q. Was there any discussion of, you know,
13 where you should have that August 24th meeting?
14 **A. In the normal rotation.**
15 Q. Was there any discussion of whether there
16 was a overflow expected?
17 **A. No, sir, I don't believe that came up.**
18 Q. Did you expect there to be an overflow at
19 that August 24 meeting?
20 **A. No, I did not.**
21 Q. Prior to the August 24 meeting you had had
22 occasion to discuss the issue of School Board prayer
23 on a talk show hosted by a Dan Gaffney, is that
24 right?

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1 **A. Yes, sir.**
2 Q. Were you invited to go on that talk show?
3 **A. No, I'm pretty sure I just called to answer**
4 **some of the public's questions about it.**
5 Q. was it your hope that the public's interest
6 would be engaged in this important issue by your
7 appearing on the WGMD talk show?
8 **A. No, sir.**
9 Q. What was your hope in appearing --
10 **A. That I would be able to clear up the**
11 **factual misconceptions which were out there.**
12 Q. So, you had identified some factual
13 misconceptions?
14 **A. Quite a few.**
15 Q. Can you tell me what they were?
16 **A. Yes, sir there were a lot of people who**
17 **were saying we were taking prayer out of school all**
18 **together. When essentially that was something that**
19 **had already been done a long time ago. There were**
20 **people who -- it essentially ran along those lines.**
21 **In other words, they did not understand what the**
22 **real issues in the case were and the way I**
23 **understood them at the time and still do, is that we**
24 **had the issue of any kind of a prayer or benediction**

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1 **at a graduation, Baccalaureate ceremony and prayer**
2 **before the School Board meetings.**
3 **I mean essentially that's what it was, it**
4 **had nothing to do with the way I saw it teachers**
5 **leading kids in prayer in schools or offering an**
6 **early morning prayer over the loud speaker. For**
7 **some reason a good number of the general public**
8 **seemed to have felt that that was something that we**
9 **were still doing when in point of fact that's been**
10 **out of the program for many many, many years.**
11 **That's if it ever was in our program to begin with.**
12 **And I'm not aware of any of that since consolidation**
13 **around the 1970s.**
14 Q. How did the misconceptions come to your
15 attention?
16 **A. By the types of phone calls and comments**
17 **and by the types that we talked about earlier. I**
18 **mean if you go back and look at some of the letters**
19 **to the editor that were written there, it was quite**
20 **clear that a lot of people did not understand all of**
21 **it.**
22 Q. I might have asked you this question and it
23 just got lost in my backs and forths. Did you
24 suspect there to be an overflow at the August

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1 24th --
2 **A. No, sir, I did not.**
3 Q. Sorry I did ask that now that I've said it
4 again. All right, at the August 24th meeting you
5 were in attendance correct?
6 **A. Yes, sir.**
7 Q. Were you surprised by the number of people
8 who were in attendance?
9 **A. Overwhelmed.**
10 Q. And were you gratified?
11 **A. Not particularly.**
12 Q. Arrangements had been made to deal with the
13 overflow of people beyond the auditorium do you
14 recall that?
15 **A. Yes, sir.**
16 Q. Do you know who made those arrangements?
17 **A. I'm going to the assumption that it was by**
18 **our staff personnel in the school itself.**
19 Q. Do you know how the staff personnel came to
20 learn that there was a likelihood that there would
21 be an overflow and that video cameras would be
22 necessary?
23 **A. No, I do not.**
24 Q. Did you ever have a discussion about that

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1 with anybody?
2 **A. No, sir.**
3 Q. It's your testimony, sir, I take it that
4 your appearance on the WGMD talk show was not
5 intended to increase the number of people in
6 attendance at the August 24 Board meeting?
7 **A. No, sir it is not. That had nothing to do**
8 **with why I appeared on the radio.**
9 Q. Were you on the radio at the time that
10 Mr. Gaffney said you all ought to go out to the
11 Board meeting and express your views?
12 **A. I don't remember.**
13 Q. Dr. Hattier, you believe that a moment of
14 silence would be effective to solemnize the Board's
15 proceedings, isn't that right?
16 **A. That is correct.**
17 Q. And you believe that Board members are
18 capable of privately reminding themselves to take
19 their responsibility seriously, is that correct?
20 **A. I would say.**
21 Q. And you believe that Board members are
22 capable of privately reminding themselves to
23 discharge their duties as Board members to the very
24 best of their abilities?

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1 **A. I would certainly hope so, sir.**
2 Q. When you go into executive session do you
3 inquire of the district attorney whether the topics
4 for discussion at executive session are appropriate
5 for executive session.
6 **A. I have never done that, no, sir.**
7 Q. Actually that's good because I would want
8 to know what you did. Have you ever seen another
9 Board member inquire of the district's attorney
10 whether the topics to be discussed are appropriate?
11 **A. Not that I remember.**
12 Q. Do you know -- are you familiar generally
13 with the appropriate topics for executive session?
14 **A. Things that would be considered private**
15 **things that would relate to employment, anything**
16 **that mentions a specific name of anyone who is**
17 **either in trouble or is facing some kind of a**
18 **suspension, contract negotiations, things that**
19 **generally would probably be best not seen by the**
20 **public and in this case I'm talking contract**
21 **negotiations, items relating to strategies in a**
22 **lawsuit such as this one. You know that's**
23 **essentially what I would feel.**
24 MR. ALLINGHAM: I'm getting the

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1 word that we have to stop for a minute.
2 let's go off the record.
3 MS. DUPHILY: We are going off the
4 record at approximately 3:05 p.m..
5 (WHEREUPON a brief recess was
6 taken)
7 MS. DUPHILY: We are back on the
8 record at approximately 3:20 p.m..
9 Q. Dr. Hattier, in the August 23 executive
10 committee, sorry, executive session minutes which is
11 Exhibit 13, I hope you have in front of you. I
12 asked you some questions about the Board members
13 expressing that their constituents did not want the
14 Board to change its practice of opening the meeting
15 with a prayer. And we have identified that as a
16 very rough estimate maybe 200 people, you had
17 contact with 200 of your constituents on that issue?
18 **A. Yes.**
19 Q. Did any of them tell you that they wanted
20 to Board to continue their practice in order to
21 preserve Christian values?
22 **A. I think some of them did.**
23 Q. Did you inquire what that meant?
24 **A. No.**

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1 Q. Did you inform those constituents that it
2 was not the purpose of the School Board Prayer
3 Policy being considered to preserve Christian
4 values?
5 **A. Yes, I did, as many of them as I could.**
6 Q. What did they say?
7 **A. She listened.**
8 Q. Anybody respond that they didn't care that
9 what they wanted to do was preserve Christian
10 values?
11 **A. uh-hum, yes.**
12 Q. How many?
13 **A. I can't tell you that, I don't know.**
14 Q. Somewhere between zero and 200?
15 **A. Probably less than that. Well, certainly**
16 **no less than zero, but I don't think it was a**
17 **majority.**
18 Q. I was I being facetious, and that's not
19 right because it won't come through properly. But
20 it was not one or two, this was a significant number
21 of?
22 **A. Yes, sir.**
23 Q. Of you constituency that you talked to,
24 correct?

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1 A. Yes, sir. As I stated earlier I think a
2 lot of people have a misunderstanding, or had a
3 misunderstanding as to what was really at issue, and
4 I'm somewhat convinced that there is still a lot of
5 people who still don't understand what's at issue.

6 You know as is true with almost any
7 situation the public sees the part that they want to
8 see. They don't see all of the details. That's my
9 opinion.

10 Q. And your concern in that respect would be
11 that the public would perceive this School Board
12 Prayer Policy with the purpose that you have
13 articulated for it as serving a different purpose,
14 that is preserving Christian values?

15 MR. GOSSELIN: Objection.

16 A. Some of them might, and some of them
17 probably would.

18 Q. On a different issue we talked about advice
19 from Mr. Griffin during the executive session
20 minutes and you were concerned that Mr. Griffin was
21 not a First Amendment lawyer. Are you aware of any
22 instances in the past where the Board relied on
23 Mr. Griffin's advice on First Amendment issues?

24 A. No, sir I'm not aware of that at all.

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1 Q. At any time during the four hours or so of
2 this executive session on August 23, remember this
3 is the one with Mr. Griffin there, the discussion of
4 constituents and whatnot, did any Board member
5 express any concern about the fact that students
6 attend Indian River School District School Board
7 meetings?

8 A. I believe that it came up with the general
9 discussion.

10 Q. What was discussed in the respect?

11 A. That students were there, and it was
12 bantered back and forth as to, you know, is this
13 part of what we should be doing, is it part of not
14 what we should be doing. But again I think that's
15 why we are here with the litigation is because the
16 students can also go to Legislative Hall where they
17 would do the same thing, you know whereas with what
18 we do. It would be more of a general discussion,
19 sir.

20 Q. Did, I mean what triggered the discussion?
21 Did someone say well you know we have students at
22 School Board meetings maybe we shouldn't have
23 prayers?

24 A. I believe if it came from anybody it would

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1 have come from Mr. Griffin in terms of discussing
2 what is the First Amendment, how you deal with
3 prayer and students in general.

4 Q. So, your best recollection is it wasn't a
5 concern expressed by a Board member?

6 A. Not to my best recollection, no, sir.

7 Q. And I take it the only specific that you
8 can recall that was discussed on that topic was
9 somebody in words or substance saying hey they can
10 go to Legislative Hall in Dover and hear a prayer
11 there, why can't --

12 A. Something to that general effect.
13 Something to that general effect.

14 MR. ALLINGHAM: Let's mark as
15 Hattier Exhibit 17 a copy of a document
16 bearing Bates numbers BPD76 through 86.
17 (WHEREUPON Hattier Exhibit 17 was
18 marked for identification)

19 Q. Again, my first question is can you
20 identify Hattier Exhibit 17 as the official minutes
21 approved by the Board of it August 24, 2004 Board
22 meeting?

23 A. Yes, sir.

24 Q. In the call to order you will see that

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1 president Walls called the meeting to order and then
2 asked Dr. Hattier to give a prayer?

3 A. Yes, sir.

4 Q. Did you know in advance that a Mr. Walls
5 was going to ask you to give the prayer at that
6 meeting?

7 A. Yes, sir I did.

8 Q. How did you know that?

9 A. I volunteered.

10 Q. When did you volunteer?

11 A. It could have been the night before or at
12 some other time, I don't remember.

13 Q. And when you volunteered did you have in
14 mind the prayer that you wanted to give?

15 A. Yes, I did.

16 Q. And where did you get that prayer?

17 A. It might have been brought in partially by
18 Mr. Neuberger at some point, and again I wish I
19 could remember when he actually talked to us, I
20 don't, okay. The other thing is I went on the
21 Internet and I looked at about a half a dozen
22 historical prayers of various time periods and
23 decided on which one I felt fit the occasion the
24 best and that's what I gave.

53 (Pages 206 to 209)

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1 Q. What made you choose that particular
2 prayer?
3 A. I like to consider himself myself an
4 amateur historian. I spend enough hours at VPI so
5 that I could have a minor in history on paper. VPI
6 does not minors, however, and I have continued with
7 a love of history all of my life and I felt that
8 since this is a contentious issue that if you would
9 like to argue with somebody you can argue with
10 George Washington. If it was good enough for George
11 Washington to give then why is it not good enough
12 for me to give also.
13 Q. A rhetorical question?
14 A. A rhetorical question, yes, sir.
15 MR. GOSSELIN: You can answer it.
16 Q. The text of the prayer that you gave is not
17 in the minutes?
18 A. No.
19 Q. We have the prayer or we know the prayer
20 that you gave?
21 A. Uh-hum.
22 Q. Is it correct that that's not a prayer that
23 invokes particular religions, sorry. Your prayer
24 does not invoke the name of Jesus Christ?

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1 A. That is correct.
2 Q. And was that by design?
3 A. No, that's more in keeping with the way I
4 personally would pray.
5 And actually if I looked, I gave my only
6 copies of that to several reporters when they left,
7 so personally do not have a copy of it. I mean if
8 you have a copy of it I'd be happy to discuss it
9 with you. But the way George Washington and some of
10 the contemporaries of the founding fathers used
11 words like the creator of our divine providence, et
12 cetera. The way they used the words would have been
13 different that perhaps in the way we do, but it may
14 have meant exactly the same thing if you had used
15 the words Jesus Christ. So, I would have to look at
16 exactly what I said. If you guys have a copy I'd
17 love to see it.
18 Q. You brought more than one copy of the
19 prayer to the meeting?
20 A. Yes, I did.
21 Q. Was that for the purpose of distributing it
22 to reporters afterwards?
23 A. I figured somebody might want a copy of it.
24 I seem to remember bringing two. One of

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1 them I had some handwritten notes on. I go through
2 multiple drafts of things which means that I would
3 have probably brought two of them. You know, one
4 that a more rough and another one that I scribbled
5 something else on. I do recall giving them both
6 away.
7 Q. Do you know who you gave them to?
8 A. No, sir. There were quite a few people
9 there that night.
10 Q. Yes, so I understand. The minutes reflect
11 that a president Walls recommended that the agenda
12 be amended to allow 45 minutes for public comments
13 due to the large number of persons who requested to
14 speak at the meeting. That was approved 10 to
15 nothing. You voted for that, I take it?
16 A. Yes, sir.
17 Q. Was there any consideration given to
18 permitting as much time as necessary to let everyone
19 speak?
20 A. The general speaking time period is 15
21 minutes and given the large numbers of people that
22 were there, we increased it to 45 minutes which is
23 basically three time what we would normally do, and
24 then I believe we always allowed some time at the

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1 end because there was also a second public comments
2 period, but as I stated earlier there are other
3 things that happen besides at the School Board
4 meeting besides this, and we did have other things
5 that we needed to discuss.
6 So, we could spend the entire night on it
7 which I don't see would have been very productive
8 which would have simply left us with a lot of other
9 Board items to do at another time period.
10 Q. I want to come to the comments at the
11 meeting in few minutes. If you look at page four of
12 the minutes, under the public comments section?
13 A. Page four, okay.
14 Q. At the bottom of the public comment section
15 which lists all of the people who spoke, there is a
16 note from president Walls in which he notes, "That
17 the Board would be reviewing additional information
18 regarding this issue and that a public forum may be
19 scheduled in the future?"
20 A. I believe he said that, yes, sir.
21 Q. And was that something that had been
22 discussed by the Board in advance, this public forum
23 idea?
24 A. We might have. I don't have a clear

54 (Pages 210 to 213)

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1 recollection of it, however.
2 Q. Did the Board ever have a public forum on
3 these issues?
4 **A. I don't think we did.**
5 Q. Why is that?
6 **A. I don't know what to tell you there.**
7 Q. If you look at page six of the minutes up
8 you will see that there is a reference down at the
9 bottom to first reading of policy on school
10 ceremonies and observances?
11 **A. Uh-hum.**
12 Q. Mr. Griffin noted that the draft policy is
13 based on guidelines from the Department of
14 Education?
15 **A. Yes, sir.**
16 Q. And is that what Mr. Griffin told the
17 Board. I mean that was true, isn't it?
18 **A. It is true, but I think we had pretty much**
19 **arrived at the conclusion independently of what he**
20 **said that that's what we ought to be doing.**
21 Q. And the triggering event for consideration
22 of those issues was Mrs. Dobrich's comment to the
23 Board, is that correct?
24 **A. Yes, sir, I believe that to be true, yes.**

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1 Q. On page nine of the minutes there are
2 reflected two additional public comments from Pam
3 Shockley and Collen Waters, do you see that?
4 **A. It should be Colleen, I think. Oh, no wait**
5 **a minute that is Collen, sorry.**
6 Q. Mr. Griffin is noted as having informed Ms.
7 Shockley that according to the regulations of the
8 State Department of Education prayer must be student
9 issued and student led. Is that advice that
10 Mr. Griffin gave to the Board as well?
11 **A. I believe it is.**
12 Q. And then there is a executive session at
13 10:55 with the Board reconvening in public session
14 at 12:55. Was there a discussion at the executive
15 session of the public comments on the School Board
16 prayer issue?
17 **A. I don't remember. We were having a lot of**
18 **issues at that time with irrigation at the Sussex**
19 **Central High School, and I do remember Dr. Isaacs is**
20 **a director with the University of Delaware in the**
21 **agricultural department and I believe he spent a lot**
22 **of time discussing some irrigation things and what**
23 **we should be doing. I don't recall, I think we were**
24 **all surprised at the amount of people who came by.**

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1 **Like you guys noted you videotaped it, there was**
2 **just a huge amount of people. I think it surprised**
3 **all of us.**
4 Q. You understand that we didn't videotape it?
5 **A. Somebody videotaped it. I assumed it was**
6 **you guys, because somebody from your office has been**
7 **videotaping an awful lot of our meetings the last**
8 **two years. There is always somebody in the back**
9 **room, I believe it's this gentleman here who comes**
10 **in and he sits in the back and he has his little**
11 **video camera. So, my assumption was that he**
12 **videotaped us. I didn't.**
13 Q. So, you don't know who videotaped the
14 August 24 meeting?
15 **A. No, I do not.**
16 Q. It certainly wasn't at your direction?
17 **A. No, I didn't even know a videotape exists**
18 **until you guys just told me about it now.**
19 Q. Was the meeting audio taped?
20 **A. The policy is for Mr. Hearn to turn the**
21 **video, sorry, the audiotape on and record what is**
22 **said. I believe she did.**
23 Q. That is the policy of the Board?
24 **A. That would be the policy, the consistent**

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1 **policy.**
2 Q. Do you recall, do you have a specific
3 recollection in your mind of the tenor of the public
4 comments at the August 24 meeting?
5 **A. Everything from very respectful to very**
6 **angry. I mean it swung a huge gamut.**
7 Q. Were there comments that you found
8 offensive?
9 **A. Yes.**
10 Q. Was anything done to curb the offensiveness
11 of those comments?
12 **A. As is noted under the public comments**
13 **section, it is our job to listen, not, it is a one**
14 **way conversation. It is not our policy to comment**
15 **as a rule on what people say unless they get out of**
16 **line in terms of mentioning names. That has**
17 **happened in which case we have shut it down. I**
18 **think in some cases here we probably could have told**
19 **people to tone it down and didn't.**
20 **I mean like I said there were some things**
21 **that in my opinion went a little bit out of hand.**
22 **But when you are dealing with a large group of**
23 **people like that and everybody does have a right to**
24 **speak, you do not she screen beforehand what they**

55 (Pages 214 to 217)

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1 are going to say.

2 Q. Did the comments at the public comment
3 portion of the August 24 meeting confirm your view
4 that many members of the public understood the
5 School Board Prayer Policy to be an issue of whether
6 or not the Board would be preserving Christian
7 values.

8 A. No. As a matter of fact, if I came away
9 with any impression at all it's that a huge amount
10 of people did not understand what the real issue was
11 and if you have listened to it, I think you would
12 agree that a lot of people did not really understand
13 what this was about.

14 Most of them in my opinion felt that more
15 or what was happening in here was changing something
16 that had been in our community for again at least
17 the 30 some odd years that we can document for sure,
18 and probably prior to that.

19 Q. Yes, and if that practice was preserved as
20 people were urging, you understood that they were
21 urging its preservation as a way to preserve
22 Christian values, isn't that correct?

23 MR. GOSSELIN: Objection.

24 A. I would have seen it more as a way of

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1 preserving what has been in the community for the
2 last 30 or 35 years. Again, everybody looks at
3 religious in their own way. Some people understood
4 it for the splenification that it is and some people
5 simply felt that something was being stripped away
6 from us period. So, I don't think you can lump them
7 all into one category.

8 Q. Well, fair enough, I didn't mean suggest
9 that there was unanimity of expression, but didn't
10 you understand a number of the comments to be urging
11 the Board to preserve the existing practice in order
12 to preserve Christian values?

13 A. Some people --

14 MR. GOSSELIN: Objection.

15 A. I'm sorry, sir.

16 MR. GOSSELIN: Wait until he is
17 done asking the question, give me a chance to object
18 which I am doing here. Now you can answer the
19 question.

20 A. Okay, thank you. I apologize. I'm certain
21 there were people who felt that way and did that,
22 yes.

23 Q. Look at Hattier Exhibit 9 which is the
24 policy itself. You told me that it changed the

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1 Board's practice on prayer at regular Board meetings
2 in one respect, which is that it expanded the number
3 of Board members offered the opportunity to
4 solemnize the proceedings either with a prayer or a
5 moment of silent whatever?

6 A. Right.

7 Q. The policy itself, though, provides that if
8 a member chooses not to exercise the opportunity the
9 next member in rotation shall be given the
10 opportunity, correct?

11 A. That is what I understand, yes.

12 Q. So, unless all ten members decline the
13 opportunity there will be a prayer or a moment of
14 silence in accord with the freedom of conscience of
15 the individual adult Board members, is that right?

16 A. That is the way it's written.

17 Q. In practice, since you offered the prayer
18 at the August 24th meeting, since that time has
19 there been any meeting at which there has, a Board
20 member has not taken up the opportunity to solemnize
21 the proceedings?

22 A. I believe that to be true. Some of them
23 have not chosen to, have chosen not to speak or not
24 to pray or whatever.

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1 Q. And in that instance the opportunity goes
2 to the next Board member?

3 A. Yes.

4 Q. And is there some, how do you keep track of
5 who's next in the rotation?

6 A. That's up to the president of the Board and
7 I'm not sure how he keeps track of it.

8 Q. That's a question I got to ask him?

9 A. Yeah answer that for you, sir.

10 Q. Let me make sure that I understand. If an
11 individual Board member affirmatively wishes not to
12 have a prayer or a moment of the silence there is no
13 way for him to effectuate that desire under the
14 policy, is there?

15 A. It doesn't look like it, does it.

16 Q. We have now gone through the June, July and
17 August meetings and so far as I can tell from the
18 Board minutes there has still been no public
19 discussion of the School Board Prayer Policy, is
20 that correct?

21 A. Probably correct.

22 Q. Did the School Board read policy BDA.1
23 before it voted on it?

24 A. Yes, sir.

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1 MR. ALLINGHAM: This would be
2 Hattier Exhibit 18 bearing Bates number
3 BPD182 through 191.
4 (WHEREUPON Hattier Exhibit 18 was
5 marked for identification)
6 Q. Here on September 28th you will see that
7 there is an executive session from 6:30 to 7:15 --
8 by the way, these are the official meeting minutes
9 of this meeting, is that correct?
10 A. Yes, sir.
11 Q. And there is an executive session from 6:30
12 to 7:15?
13 A. Yes, sir.
14 Q. The only topic is collective bargaining
15 pending a potential litigation. Am I correct that
16 that executive session was convened to discuss the
17 School Board Prayer Policy?
18 A. I don't remember.
19 Q. On page three of the minutes, you will see
20 under public comments that you are recorded as
21 thanking the administration for their work in
22 organizing a plan to successfully handle the large
23 number of persons in attendance at last month's
24 Board meeting, do you see that?

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1 A. Yes, sir.
2 Q. How did you come to learn that the
3 administration had organized a plan successfully to
4 handle those persons?
5 A. I found out that they had contacted the
6 Delaware State Police to see to it that the traffic
7 was handled smoothly, that parking would be handled
8 smoothly, that there were chairs set up in virtually
9 two auditoriums, that they had gone to the extra
10 effort to see to it that there would be video
11 cameras and monitors in the school gymnasium itself
12 to handle, that way people weren't just standing
13 around.
14 You know, when you look at the numbers --
15 the average School Board attendance might be 50
16 people, you know, you said you were a School Board
17 member, it's generally under attended and all of a
18 sudden we have anywhere between, I'm going to make a
19 guess, six to 800 people. There was a large group
20 in any event.
21 I think it reflected well on the
22 administration to have planned ahead for that, and
23 to handle it so that there were no incidents of any
24 type. There weren't even parking accidents. I

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1 think they did really good.
2 Q. So, it didn't come, there are people to
3 whom it didn't come as a shock that there were going
4 to be hundreds and hundreds of people?
5 A. Apparently not, no, sir.
6 Q. But it as a shock to you?
7 A. Actually yes, it was.
8 Q. On page six of the minutes you will see
9 that near the top Mr. Walls submitted Policy BDA.1
10 Board Prayer at Regular Board Meetings for a first
11 reading. Do you have any reason to doubt that it
12 was September 28th that the policy was first read?
13 A. No.
14 Q. So, am I correct that at some point between
15 August 24 and September 28 --
16 A. Wait a minute, back up, I'm sorry. I was
17 reading the wrong thing, sir.
18 Q. Okay, page six.
19 A. Okay got it, top of the page first reading
20 all right, thank you.
21 Q. Am I correct that at some point between
22 August 24th and September 28th the Board policy
23 committee arrived at a final determination about the
24 text of the proposed Board Prayer Policy?

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1 A. Yes, sir.
2 Q. Now, in the process of adopting policies
3 must the Board approve the proposed text as well
4 before it goes to reading?
5 A. That's the purpose of the first reading.
6 Q. Okay. There is also a first reading for
7 Policy IN.1 on Religion and the policy on School
8 Prayer at Commencement and Baccalaureate, these are
9 all first readings, correct?
10 A. Yes.
11 Q. Okay?
12 A. The baccalaureate one changes were made to
13 it so, even though technically it would have been a
14 second reading because of the changes that were made
15 it had to be resubmitted as a first reading.
16 Q. Now, over on page nine in the second
17 heading there is a another public comment section.
18 Is it customary for there to be multiple public
19 comment sections in the Board meetings?
20 A. There is also an opportunity for a second
21 public comments at the end of the meeting. As I
22 explained earlier, the standard allotted time is 15
23 minutes, five minutes if you are part of a group,
24 three minutes if you are an individual. But with

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1 the numbers of people who came forward the month
2 before we had increased it to 45 minutes initially,
3 however it is always our policy that there be two
4 would public comment sections.

5 In my opinion that gives the public a
6 chance to listen to have we have done and then give
7 us their take on it. People do not always, however,
8 take us up on the opportunity. If there is any
9 public comment period that gets skipped more often
10 than not, this is the one.

11 Q. Now, here the Reverend Jerry Fike is
12 reported as having thanked the Board for continuing
13 to have a prayer at the beginning of the Board
14 meeting. I take it from the fact that you voted to
15 approve these minutes that you believe that
16 accurately reflects what Mr. Fike said?

17 A. Yes, sir.

18 Q. And then the minutes record that he also
19 expressed his apology to Mona Dobrich for any
20 comments he made during his prayer as Sussex Central
21 High School's graduation ceremonies that offended
22 her?

23 A. Yes, sir.

24 Q. And I take it from the fact that you

1 Q. Now, if you could take Hattier 18 and
2 Hattier 19, and look at them together. You'll see
3 that on Hattier 18 the September 28th minutes the
4 call to order is reflected as president Harvey Walls
5 called the regular meeting of the Indian River
6 School District Board of Education to order at 6:30
7 p.m.. There is no notation about a prayer.

8 MR. GOSSELIN: You are looking at
9 BPD208?

10 MR. ALLINGHAM: No I'm looking at
11 182, the September minutes, Hattier 18.

12 MR. ALLINGHAM: I'm sorry, my
13 mistake.

14 A. Okay.

15 Q. Do you know whether a prayer was offered at
16 that meeting?

17 A. On September 28th generally we would open
18 with a moment of prayer, either before the
19 presentation of colors or after the presentation of
20 colors. Which is the Pledge of Allegiance and the
21 units either the ROTC units, you know, bringing the
22 flag down. Okay, so on the 28th it looks like we
23 had a prayer or an invocation of some type at about
24 7:30 when we would normally start the reconvening

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1 approved the minutes that you also thought that
2 accurately reflected his comments?

3 A. Yes, sir.

4 Q. Did you think it appropriate for Reverend
5 Fike to express his apology to Mona Dobrich?

6 A. Well, I think that since things rose up
7 under something he said I would certainly think it
8 was a reaching out if nothing else. And I
9 personally feel that yes it was appropriate.

10 Q. On page ten under pending or potential
11 litigation, there is a reference to Mr. Helms'
12 motion seconded by Dr. Isaacs that the Board secure
13 legal counsel regarding potential litigation. I
14 take it from this that as of September 28th the
15 Board had not retained any counsel relating to the
16 issues in this litigation?

17 A. I believe we talked to the counsel by that
18 particular point, but I don't think we had made any
19 decision to officially hire anybody.

20 MR. ALLINGHAM: This is Hattier
21 Exhibit 19 a document bearing Bates numbers
22 BPD208 to 217.

23 (WHEREUPON Hattier Exhibit 19 was
24 marked for identification)

1 versus the regular district meeting in which case we
2 started right at 7:30 and gave it at that time.

3 Q. Fair enough. So what you are referring to
4 in Hattier 18, the September 28 minutes is that on
5 page two of the minutes after the presentation there
6 is a statement president Walls stated it's been the
7 history and custom of the Indian River School
8 District Board of Education to open its meetings
9 with a prayer. He noted that the prayer is
10 voluntary and among the members of the Board. He
11 then asked Dr. Hattier to give an invocation?

12 A. Yes.

13 Q. And this the second straight meeting at
14 which you gave an invocation?

15 A. You know, I don't remember giving the
16 second one, but if it says I did, I must have.

17 Q. You must have known in advance?

18 A. I must have known in advance. I don't
19 remember the second one at all, but I must have.

20 Q. Do you remember what prayer you gave?

21 A. No, I do not. Knowing my past practice it
22 would have been another historical one.

23 Q. This history and custom of the Indian River
24 School District Board of Education to open its

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1 meetings with a prayer, is that a custom and
2 practice of opening its public meetings with a
3 prayer, its special meetings with a prayer, its
4 public sessions, its closed session, is there any
5 consistent practice?
6 **A. I'm going to belief that the consistent**
7 **practice was the public sessions. That's the way**
8 **it's been ever since I have been on the Board and**
9 **I'm pretty sure that's the way it was in the past.**
10 Q. Is it correct that the Board does not open
11 its executive sessions with a prayer?
12 **A. No. We've already opened at that particular**
13 **point, it's merely a continuation.**
14 Q. Well, in this particular Board meeting you
15 had already met in executives session for 45
16 minutes?
17 **A. To my knowledge the time being on the Board**
18 **we've never opened it early with prayer, we've**
19 **always opened it around either before or after the**
20 **presentation of colors. That's just been part of**
21 **the general opening up of the way the Board runs.**
22 Q. I take it then that on September 28th at
23 least you didn't feel the need to solemnize the
24 proceeding until 7:30?

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1 **A. The executive sessions or anything that we**
2 **do beforehand from what I can recall has never been**
3 **treated in that fashion. I believe that we viewed**
4 **it for the School Board meeting itself.**
5 Q. Is there any difference in terms of the
6 importance of taking your duties seriously --
7 **A. In point of no, I agree.**
8 Q. Discharging them to the best of your
9 ability?
10 **A. Correct.**
11 Q. Is it just a historical accident that you
12 opened the public meetings with a prayer but don't
13 open the closed meetings with a prayer?
14 **A. As I said --**
15 MR. GOSSELIN: Objection.
16 **A. My apologies. As I stated, it has been the**
17 **history and practice of the district for at least as**
18 **long as I can remember that it's around the time of**
19 **the presentation of the colors. I believe at this**
20 **point we have moved it before the colors. There are**
21 **times when we did it after the colors.**
22 Q. In that very lengthy meeting on August 23rd
23 do you recall whether the closed session opened with
24 a prayer?

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1 **A. No, it would not have.**
2 Q. Do you recall whether the meeting itself
3 opened with a prayer?
4 **A. On the very lengthy one you mean the August**
5 **23rd meeting --**
6 Q. The August 23rd meeting --
7 **A. No, I don't believe it would have opened**
8 **with a prayer.**
9 Q. Is that because that was a special meeting?
10 **A. I believe so, yes sir.**
11 Q. There is no reason to distinguish between
12 the importance of Board members' performance of
13 their duties on August 23 and say August 24, is
14 there?
15 **A. No, in point of fact no, I agree with that.**
16 **But that has not been the history or the practice of**
17 **the district for again as many years as I can**
18 **recall.**
19 Q. Well, let me ask the question bluntly, do
20 think it's any less important to solemnize the
21 proceedings, it was any less important to solemnize
22 the proceeding on August 23rd than it was on August
23 24th? It was equally important on both dates,
24 wasn't it?

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1 **A. Certainly. And based on your comments in**
2 **the future sir we may do that.**
3 Q. All right, I gave you Hattier Exhibit 19
4 this the October 19, 2004 meeting, and here
5 immediately after the roll call president Walls asks
6 again for an invocation and noting the history and
7 that it's voluntary among the members of the Board
8 of Education and he asks Dr. Hattier to give the
9 invocation again --
10 **A. Uh-hum.**
11 Q. -- did you know that you were going to
12 asked to give the invocation on October 19th?
13 **A. I must have. I don't remember but I must**
14 **have.**
15 Q. Is this consistent with the practice of the
16 Board going backward from August 24 that you were
17 primarily asked to give the invocation?
18 **A. Yes, that would be a deviation. I can't**
19 **tell you why, why I was elected to do it. I don't**
20 **know what to say about that. But I do know that we**
21 **were trying to start rotating it on or about that**
22 **time period.**
23 Q. On or about October 19th?
24 **A. Well, actually on or about even September**

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1 **28th, I mean that's when the whole process would**
2 **have started. I'm not sure why Mr. Walls asked me**
3 **to do it.**
4 Q. Okay so, you had in your hands for the
5 first reading the actual policy which contemplated
6 rotation?
7 **A. Right.**
8 Q. And it was your understanding that the
9 rotation practice was going to begin right away?
10 **A. That's what I would have felt, yes, sir.**
11 Q. So, you can't recall why on October 19th
12 you were asked to give it again?
13 **A. No, I can't.**
14 Q. For the third time in a row?
15 **A. No, that would have been the second.**
16 Q. No, August 24 and September and then
17 October 19?
18 **A. You know what, I don't remember giving it**
19 **three times in a row. I do remember giving it**
20 **specifically, I do remember specifically giving it**
21 **at the big meeting, and I could have given it one**
22 **other time, but I really don't remember giving it**
23 **three times in a row.**
24 Q. Well, do you check the minutes to make sure

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1 that they are accurate before you vote to approve
2 them?
3 **A. Obviously I did not, not on this one. I'll**
4 **have to go back and take a look at what my daytimer**
5 **notes show that I did during that time period. I**
6 **mean it's possible I logged in a time block where I**
7 **looked something up on the Internet. Which is my**
8 **habit on most occasions, not all of them.**
9 Q. That is a your habit is to record on your
10 daytimer when you were looking stuff up on the
11 Internet?
12 **A. When I'm doing a block of activities. I**
13 **have four children, several rental properties, I'm**
14 **active in the Rotary, I'm on the School Board, my**
15 **wife is legally blind and doesn't drive at night, so**
16 **we've had some interesting times and my wife and I**
17 **spend a lot of time trying to coordinate what the**
18 **various activities are going to be. I mean it makes**
19 **for an exciting life sometimes.**
20 Q. One upshot of which is that you try to mark
21 down on your daytimer what you are doing?
22 **A. I try, yes, sir.**
23 MR. ALLINGHAM: I'm going to ask
24 to have marked as Hattier Exhibit 20 a copy

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1 of the next Board minutes on November 16,
2 2004.
3 (WHEREUPON Hattier Exhibit 20 was
4 marked for identification)
5 Q. Keep 19 in front of you as well as 20. I
6 just wanted to go to 20 for a minute because --
7 **A. Okay.**
8 Q. You'll see that --
9 **A. Nope didn't happen.**
10 Q. -- at the November 16, 2004 meeting the
11 minutes reflect that you were asked to give an
12 invocation with the usual drill about the history
13 and the voluntary nature. Did you give the
14 invocation at the November 16 Board meeting?
15 **A. You know, at this point I have to plead**
16 **ignorance. I can't tell you because I don't believe**
17 **that I did four in a row. I just don't think I did**
18 **four in a row.**
19 Q. Wouldn't it be your practice at least with
20 respect to points at which the minutes refer
21 specifically to you to make sure that they were
22 accurate?
23 **A. It certainly would.**
24 Q. You did vote to approve all these minutes,

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1 right?
2 **A. Yes, I did.**
3 Q. Let's go back to Hattier Exhibit 19. Oh,
4 by the way at the September 28th Board minutes, this
5 is Hattier 18, there is still no public discussion
6 of the Board Prayer Policy, is there?
7 **A. You said the 28th, correct?**
8 Q. Yeah, Hattier Exhibit 18?
9 **A. No, it looks like the only thing we did at**
10 **that time period was the policy committee the**
11 **committee first and second readings. Actually all**
12 **first readings.**
13 Q. And there were a couple of executive
14 sessions where again the rubric of pending and
15 potential litigation is --
16 **A. Correct.**
17 Q. Is it your belief that you may have
18 discussed the School Board prayer and other prayer
19 policies during those executive sessions?
20 **A. Probably.**
21 Q. Now, in the October 19 minutes, if you will
22 look at page five, you will see that under policy
23 committee --
24 **A. Uh-hum.**

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1 Q. -- there is a second reading and
2 recommended approval and subsequent approval of four
3 new policies including Board prayer, religion and
4 school prayer at commencement, graduation and
5 baccalaureate, do you see that?
6 **A. Uh-hum.**
7 Q. And there was no public discussion of these
8 policies at any time prior to this approval either,
9 was there?
10 **A. Not unless Mr. Walls did it separately from**
11 **what I'm aware of.**
12 Q. Separately outside of the Board meetings
13 which these minutes record?
14 **A. In other words, at his policy committee**
15 **meetings.**
16 Q. Fair enough. You are not on the policy
17 committee?
18 **A. No, sir, I'm not.**
19 Q. At any rate the full Board never had a
20 public discussion of the School Board Prayer Policy,
21 is that right?
22 **A. That is correct.**
23 Q. And is that the custom and practice of the
24 Board to have no public discussion of a policy

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1 that's being adopted?
2 **A. Well, the idea is that you read it at the**
3 **meeting on a first reading and then if the public**
4 **has a comment, they would contact the schools or I**
5 **don't think they speak up at the meetings**
6 **themselves, but the idea is that if you have an**
7 **objection to it that you would contact the**
8 **administration and they would make whatever**
9 **appropriate changes would need to be made. That's**
10 **the way I understand it.**
11 Q. Yes, sir, my question was whether the Board
12 typically at some point prior to the adoption of a
13 policy engages in public discussion of the policy
14 and the reasons for it?
15 **A. No, not to my knowledge.**
16 Q. Why did you vote for the Board Prayer
17 Policy?
18 **A. I felt it was the right thing to do.**
19 Q. The Board Prayer Policy as we've
20 established is in substance identical to the and
21 mostly verbatim to the hanging of the proposed
22 policy that was given to you by the Rutherford
23 Institute back in looks like August 30th or
24 thereabouts?

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1 **A. Somewhere in there, yes, sir.**
2 Q. Did you ever have an opportunity to ask
3 anyone representing the Rutherford Institute where
4 it got the language in these policies?
5 **A. No, I did not.**
6 Q. Was there any discussion of the language in
7 these policies at any time at the Board level?
8 **A. This would have been discussed at an**
9 **executive committee meeting.**
10 Q. Executive session?
11 **A. Executive session, I'm sorry, yes, sir.**
12 Q. At any time did anyone offer any other
13 purpose for the Board Prayer Policy other than to
14 solemnify its proceedings?
15 **A. No they did not.**
16 Q. No Board member ever suggested that it was
17 an appropriate policy to preserve Christian values?
18 **A. Not that I'm aware of.**
19 Q. Paragraph three says such opportunity, that
20 is the opportunity to pray, have a moment of
21 silence, such opportunity shall not be used or
22 exploited to proselytize, advance or convert anyone
23 or to derogate or otherwise disparage any particular
24 faith or belief. Is it your view that that limits

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1 in any way the right, the constitutional right of
2 individual Board members to pray as they see fit?
3 MR. GOSSELIN: Objection. Go
4 ahead.
5 **A. I believe that if you are offering a prayer**
6 **for splenification that it is not the correct place**
7 **to derogate or put anybody else down because that**
8 **does not solemnify anything. All that does is at**
9 **that particular point become insulting. I mean, as**
10 **I said, I grew up in the military I sat through many**
11 **experiences with chaplains in mixed groups and what**
12 **I saw the chaplains do, the military chaplains was**
13 **nothing but uphold what I would consider to be the**
14 **highest ideals of God and country and make it as**
15 **inclusive as possible.**
16 **And I genuinely believe that that's where**
17 **my Board members, my fellow Board members were**
18 **coming from also.**
19 Q. That is to say they wanted to preserve the
20 freedom to pray, but they also had a desire to be as
21 inclusive as possible?
22 **A. Absolutely.**
23 Q. Okay. How will you know as a Board member
24 whether one of your fellow Board members uses an

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1 opportunity established in paragraph one, to
2 proselytize, advance or convert anyone or to
3 derogate or otherwise disparage any particular faith
4 or belief?
5 **A. How do I answer this one. I believe it was**
6 **a Supreme Court justice who said I can't define**
7 **pornography but I know it when I see it. And I**
8 **think that in this particular case it's fairly easy**
9 **at least for me, where if someone is upholding the**
10 **ideal asking that we think about things, but if he**
11 **says on the other hand that the only way this can**
12 **happen is through Jesus or through a belief in Allah**
13 **or that you have to convert you entire life over to**
14 **something in order for this to happen that that**
15 **would be proselytizing.**
16 **But I have not seen that in my time on the**
17 **Board.**
18 Q. Well, let me give you an example --
19 **A. Okay.**
20 Q. -- and ask you to apply the way that you
21 would examine that issue. Suppose that a Board
22 member said God please grant us the wisdom to take
23 the right actions on issues that are presented to us.
24 this evening and know the right way which knowledge

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1 can only come through knowledge of our Lord and
2 Savior Jesus Christ. Would you consider that that
3 is a prayer that proselytizes others in the audience
4 at that time?
5 MR. GOSSELIN: Objection.
6 **A. No, I would believe that to be the freedom**
7 **of conscience of what he believes. That would not**
8 **suit my freedom of conscience. You know I would**
9 **listen to him and respect what he had to say and you**
10 **know incorporate those parts that I feel are**
11 **appropriate and I would drop the rest of it.**
12 Q. That's you, what you would do?
13 **A. That is correct.**
14 Q. But you would think it appropriate under
15 the Board's policy for him to offer that prayer?
16 **A. If that's what the freedom of his**
17 **conscience offers him. I don't view that as**
18 **proselytizing.**
19 Q. I'm going to ask you another question. Can
20 you put yourself in the shoes of say a elementary
21 school student who has been invited to a School
22 Board meeting who hears an adult speaking from the
23 dais, the panel, the stage being asked to give an
24 invocation by the president of that Board, and the

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1 student hears the wisdom and truth that can only be
2 known through knowledge of our Lord and Savior Jesus
3 Christ. Do you think that that threatens, I don't
4 mean threaten in a physical sense, I mean offers the
5 possibility that the student could feel that it is
6 the view of the School Board, those people in
7 authority up on the stage that the truth can only be
8 known through knowledge of our Lord and Savior Jesus
9 Christ?
10 MR. GOSSELIN: Objection. Go
11 ahead.
12 **A. If that same student were listening to a**
13 **speech by President Bush on TV when he talks about**
14 **asking God beneficence upon our country, I don't see**
15 **what the difference is, other than one seems to take**
16 **place in a school forum and the other one takes**
17 **place in a broader function. You've got the**
18 **President of the United States asking us to do**
19 **things, you know, and he is speaking not just to**
20 **adults he is speaking to everybody. You know,**
21 **what's the difference.**
22 **I understand what you are asking but I also**
23 **would question what the difference is.**
24 Q. So, your answer to my question is no you

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1 don't see any danger?
2 **A. No, I do not, because that same student at**
3 **some other point might be exposed to other**
4 **individuals who talk about the Indian Great Spirit,**
5 **or who may be exposed to a Jewish rabbi. I mean**
6 **keep in mind, Lee versus Weitzman was about a rabbi**
7 **making a speech and that was not acceptable either.**
8 **But, you know, if they listen to it and**
9 **they have a chance to think about it on their own,**
10 **in any formative year people grow and they put**
11 **circumstances together. So I don't see that as a**
12 **problem.**
13 Q. What do you figure the chances are that a
14 prayer would be offered by a person in any tradition
15 other than the Christian tradition from this
16 rotating the Board?
17 **A. Under the current policy with the people**
18 **being elected, unless an individual of the Jewish**
19 **faith or the Muslim faith or Bahia or whatever, you**
20 **know, runs for office, probably not good. But on**
21 **the other hand in listening to somebody else you**
22 **know deliver a speech at another time period I would**
23 **think that at some point it would be good, unless of**
24 **course we strike religion from public life**

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1 **altogether, in which case it's over with.**
2 Q. Well, you understand this lawsuit is only
3 about the issues in this lawsuit?
4 **A. I understand that.**
5 Q. Okay. There has been a lot of talk about
6 I'm sure from your constituents and in the letters
7 to the editor which I read as well as you, about the
8 effort to strike religion from public life
9 altogether that this lawsuit represents, but you
10 don't actually believe that that's what this lawsuit
11 seeks to accomplish, do you?
12 **A. I believe that this lawsuit is a part of**
13 **that particular effort, yes I do.**
14 Q. In adopting the policy did you take into
15 account, that is the policy on School Board prayer,
16 did you take into account what you perceived to be
17 the role of the persons who raise these issues
18 before the Board in your decision whether to adopt
19 this there policy?
20 **A. I'm sorry I don't understand the question.**
21 Q. Did the role of this lawsuit as you
22 perceive it in a larger plan to eliminate religion
23 from public life altogether have any role in your
24 decision to vote to adopt the School Board Prayer

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1 Policy?
2 **A. No.**
3 MR. ALLINGHAM: Let's go off the
4 record.
5 MS. DPHILY: We are going off the
6 record at approximately 4:16 p.m..
7 (WHEREUPON a brief recess was
8 taken)
9 MS. DPHILY: We are back on the
10 record at 4:17 p.m..
11 Q. You mentioned earlier that the Board
12 policies are posted on the web?
13 **A. Yes.**
14 Q. When did that practice begin?
15 **A. The practice began some time around 2004 in**
16 **the early portions of the year. They were putting a**
17 **lot of student responsibilities and student items on**
18 **the web a piece at a time. There has been an**
19 **ongoing effort since about the year 2000 and maybe 1**
20 **or maybe 2002 to upgrade and build our web site to**
21 **where it is today.**
22 Q. Do you know whether anyone asked to have a
23 copy of the School Board Prayer Policy and was told
24 to file a FOIA request if they wanted it?

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1 **A. Yes, I believe I was.**
2 Q. Who was that?
3 **A. I don't know who the person was, but in**
4 **defense of the district policy that is what they**
5 **were advised to do the way I understand it by an**
6 **attorney, that way we have a copy of whoever**
7 **requested it. That's what I heard. I mean, to me**
8 **it's ridiculous up want a copy, get a copy. All**
9 **right, but my understanding was that was the legal**
10 **advice at the time.**
11 Q. Who gave had that legal advice?
12 **A. I have no clue.**
13 Q. Where did you get that understanding from?
14 **A. From talking to, I believe it was**
15 **Mrs. Hearn or Mrs. Hobbs. Because Mrs. Hearn, the**
16 **way I understand it Mrs. Hearn would be the one that**
17 **would handle that.**
18 Q. If the policies either are or are going to
19 shortly to be made available on the web, what
20 possible purpose would be served by requiring
21 somebody to file a FOIA request --
22 **A. I have no clue and I'm sorry to step on top**
23 **of what you are talking about. I have no clue.**
24 Q. It's not an action or a direction that you

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1 had anything to do with?
2 **A. Zero.**
3 Q. Are policy committee meetings open to the
4 general public?
5 **A. I believe that they are.**
6 Q. Are they, is notice given of policy
7 committee meetings?
8 **A. Policy committee meetings are published, if**
9 **I'm not mistaken all committee meetings are**
10 **published openly in the newsletter or in the**
11 **calendar that goes out. Now we have had to change**
12 **them from time to time because somebody can't do it,**
13 **but I believe, thank you sir, that a notice is**
14 **published somewhere that the committee meetings have**
15 **changed.**
16 Q. Did ever attend any policy committee
17 meeting at which the School Board Prayer Policy was
18 discussed?
19 **A. No, policy committee meetings are on Friday**
20 **afternoons and in my practice that's one of our**
21 **busier time periods, I can't close for that.**
22 Q. Other than the executive sessions which we
23 have identified in the various minutes at which
24 either School Board Prayer Policy was discussed as

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1 we can tell from August 23 or may have been
2 discussed as we tried to infer from the reasons for
3 the executive committee sessions, the executive
4 session, have you ever had any discussions with
5 anybody – sorry, first of all with any other Board
6 member about the School Board Prayer Policy?
7 **A. We have discussed it or I have discussed,**
8 **it, yes.**
9 Q. With other Board members?
10 **A. Yes.**
11 Q. Outside of a Board meeting?
12 **A. Yes.**
13 Q. And outside of the policy committee
14 meeting?
15 **A. Yes.**
16 Q. With whom?
17 **A. I'm going to say probably Charlie Bireley,**
18 **Mr. Walls. I don't remember, I mean we talk on**
19 **other issues from time to time.**
20 Q. And are these conversations that you
21 arrange for that purpose?
22 **A. No.**
23 Q. So these are incidental to other
24 conversations that you have?

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1 **A. Yes.**
2 Q. At any time during any executive session,
3 Board session, policy committee session to the
4 extent that you heard about it, or during your extra
5 Board meeting discussions with fellow Board members,
6 did anyone ever express any reservations about the
7 School Board Prayer Policy?
8 **A. My feeling is that all of us knew that this**
9 **is something that was going to be litigated and**
10 **tested, and in that sense is there a reservation,**
11 **yes there is. On the other hand I believe certainly**
12 **in my own mind I believe that, you know, what we are**
13 **doing is fair and equitable for all the parties**
14 **concerned.**
15 **And in that sense, you know, it will stand**
16 **or fall on its own. Which again is why we are here.**
17 Q. In consideration with your suggestion that
18 this was going to be litigated no matter what, did
19 anybody ever inform you that the lawyers for
20 Mrs. Dobrich had contacted everyone they could find
21 to request the opportunity to talk to the Board or
22 the Board's representatives --
23 **A. Yes.**
24 Q. About the existing policies so as to avoid

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1 litigation?
2 **A. Yes.**
3 Q. And did you learn that those requests were
4 rejected out of hand?
5 **A. Yes.**
6 Q. And if you were so sure that the litigation
7 – well, first of all, did the Board direct that
8 those requests be rejected?
9 **A. It probably happened at the Board level,**
10 **yes.**
11 Q. Was there a discussion of that?
12 **A. Yes.**
13 Q. And why don't you tell me what the
14 discussion consisted of?
15 **A. The discussion generally consisted of**
16 **should we do it or not, and I believe it was on**
17 **advice of attorney that we decided not to talk to**
18 **them.**
19 Q. Which attorney?
20 **A. That's the harder question to answer. That**
21 **I don't recall who said that. I know Mr. Neuberger**
22 **was not in favor of discussing anything with the**
23 **ACLU. Mr. Griffin I believe was in favor of**
24 **discussing something with the ACLU. I'm not certain**

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1 **that the two Johns as we call them were or weren't.**
2 **So, I don't know what to say about that.**
3 Q. Well, Mr. Neuberger wasn't representing the
4 Board, right?
5 **A. Not after a certain point.**
6 Q. Well never according to your testimony
7 earlier?
8 **A. Correct.**
9 Q. So, Mr. Griffin as I understand it wasn't
10 representing the Board on these issues, correct?
11 **A. No, but he is still the legal counsel of**
12 **record for the district.**
13 Q. Okay?
14 **A. So pretty much no matter what he was being**
15 **included, I'm sure he courtesy copied a lot of**
16 **different things that happened.**
17 Q. So, Mr. Griffin who remained involved
18 counseled the Board to meet with Plaintiffs lawyers?
19 **A. I think he did.**
20 Q. Okay. Mr. Cafferty and Mr. Balliger you
21 just don't remember?
22 **A. I don't remember, no.**
23 Q. So far you haven't identified any legal
24 advice that you should not meet were the Plaintiffs

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1 attorneys?
2 **A. That's about right.**
3 MR. GOSSELIN: Just to clarify,
4 are you talking about -- the premise of
5 your question is that Mr. Dobrich's
6 attorneys attempted to meet with the Board
7 to talk about the Board Prayer Policy or
8 the whole --
9 MR. ALLINGHAM: The whole issues.
10 MR. GOSSELIN: All of the issues
11 okay.
12 Q. So, your best recollection Dr. Hattier is
13 that you concluded that you, the Board, concluded
14 that you would not accept the request of the, of
15 Mrs. Dobrich's attorneys on the basis of advice of
16 counsel. That counsel was not Mr. Neuberger, it was
17 not Mr. Griffin who advised you to meet, and it was
18 not, and you can't remember when it was Balliger or
19 Cafferty?
20 **A. No.**
21 Q. No means yes that's an accurate summary of
22 the testimony?
23 **A. That's probably, yeah.**
24 Q. Were there any dissenting voices about

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1 meeting with the Plaintiffs?
2 **A. I believe some of the Board members may**
3 **have dissented, I can't tell you who.**
4 Q. Did that go to an actual Board vote?
5 **A. That's a good question. I don't remember.**
6 MR. ALLINGHAM: Mark as Hattier
7 Exhibit 21 a document bearing Bates numbers
8 BPD 249 to 258.
9 (WHEREUPON, Hattier Exhibit 21 was
10 marked for identification)
11 Q. Is this the official minutes of the
12 December meeting?
13 **A. Yes, sir.**
14 Q. When you voted to approve them did you
15 believe them to be accurate?
16 **A. Yes, sir.**
17 Q. Of you look at page three of the minutes,
18 there is a public comment from Mona Dobrich in which
19 it is noted that she had requested clarification
20 through her attorney on the recently adopted
21 policies regarding religion, however she had not yet
22 received a response. She stated that she and her
23 son moved away from Georgetown to the city due to
24 the continued harassment of community members

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1 because of this issue. Do you recall that
2 Mrs. Dobrich made those comments?
3 **A. Yes, I do.**
4 Q. What was your reaction to her disclosure
5 that she and her son had moved away from Georgetown
6 due to continued harassment from community members?
7 **A. I don't think it's a good comment on**
8 **community members to harass people on things like**
9 **this.**
10 Q. Were you distressed about that?
11 **A. Yes.**
12 Q. Is it fair to say that by December 21 you
13 as a Board member had notice that Mrs. Dobrich had
14 requested clarification in writing through her
15 attorney on the recently adopted religion policies?
16 **A. Yes.**
17 Q. Did anyone respond to Mrs. Dobrich about
18 why she hadn't gotten a response?
19 **A. I'm not aware of any communication, no.**
20 Q. Was there any discussion of that issue
21 during the Board meeting on December 21?
22 **A. I don't think so, unless it would have**
23 **happened later on in executive session.**
24 Q. Is the district's practice or policy to

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1 ignore letters from interested members of the
2 community?
3 **A. No. That's something, however, that would**
4 **be handled by Mrs. Hobbs and by the administration**
5 **rather than by the Board. I mean the Board would**
6 **direct them what to do but I was not president of**
7 **the Board so I didn't get involved in that**
8 **particular aspect.**
9 Q. Well, you told me earlier that the decision
10 not to respond was made at the Board level?
11 MR. GOSSELIN: Objection.
12 **A. The decision not to respond to the ACLU,**
13 **regarding them coming by to visit but not to respond**
14 **to Mrs. Dobrich, that's a separate issue.**
15 Q. You recall that the ACLU made the request
16 for clarification of the Board policies?
17 **A. Yes.**
18 Q. And on what basis do you tell me that
19 today?
20 **A. What I recall is the letters that came to**
21 **us or that I seem so remember them being on that**
22 **letterhead, that's what I recall.**
23 Q. So, you did see the letters?
24 **A. I saw a letter.**

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1 Q. You did see a letter asking for
2 clarification of the Board policies?
3 A. Yes.
4 Q. And requesting to meet with the Board?
5 A. Yes.
6 Q. And it's your recollection that it came on
7 ACLU letterhead?
8 A. That is a my recollection.
9 Q. Apart from Mrs. Dobrich has the Board ever
10 received complaints or the district ever received
11 complaints about religious practices in district
12 schools?
13 A. I believe that concurrent with this, or on
14 or about the same time period, that this is where
15 the Does would come in in terms of one of the
16 complaints that they made.
17 Q. And apart from the Does and Dobriches you
18 don't recall any complaints about religious
19 practices?
20 A. I don't recall any, not in my time on the
21 Board, no, sir.
22 Q. And did the district also ignore the
23 complaints from the Does?
24 A. No.

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1 Q. Was a response given to the complaints from
2 the Does?
3 A. Yes, and we corrected what they were
4 complaining about.
5 Q. Did you ever notify the Does that a
6 correction had been made?
7 A. You will have to ask the people who would
8 normally correspond with that, not me, but I do know
9 that went the Does made their comments about what
10 they felt was happening, this had to do with the
11 Bible Club that within a very short time period that
12 that was corrected.
13 Q. Corrected to comply with constitutional
14 practice?
15 A. To comply with what is the current law on
16 the issue, yes.
17 Q. Fair enough?
18 A. I don't remember that one lingering for any
19 great length of time at all.
20 Q. To that the Board recognized that the prior
21 practice did not comply with constitutional law on
22 the issue?
23 MR. GOSSELIN: Objection.
24 A. Apparently not. I'm sorry.

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1 Q. I know that you didn't go to policy
2 committee meetings on this topic, but I want to show
3 you and in fact I'm going to mark for identification
4 Hattier Exhibit 22 what I believe to be an agenda of
5 a policy committee meeting?
6 A. Okay.
7 (WHEREUPON Hattier Exhibit 22 was
8 marked for identification)
9 Q. This bears Bates number BPD467. Can you
10 identify this as an agenda of a policy committee
11 meeting?
12 A. No, I cannot.
13 Q. Do you recognize the handwriting on this
14 document?
15 A. No, I do not.
16 Q. I'll bet you a nickel that it's a female?
17 A. I basically would be another nickel along
18 with you.
19 MR. GOSSELIN: Why because you can
20 read it?
21 MR. ALLINGHAM: Yeah. I know it's
22 not mine.
23 A. And it's not mine either, sir.
24 Q. About six lines under the typed item four

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1 which is discuss policy goals for the 2004 - 2005
2 school year, there is a notation, religion - follow
3 Board's direction?
4 A. Okay.
5 Q. You testified earlier that you thought that
6 the text of the policy on Board prayer was approved
7 by the policy committee?
8 A. Yes.
9 Q. This notation appears to be reflecting that
10 the policy committee was following the Board's
11 direction on religion issues. Does this cause you
12 in any way to rethink your earlier testimony?
13 A. No. First off, it's dated July 19th, which
14 I believe would have been before the Board meeting
15 of the whatever the July meeting would have been.
16 That is consistent with it having been brought to
17 somebody's attention and at least they discussed it
18 at a policy meeting and that they were starting to
19 take a look at it and other than that they wanted
20 the Board's input first, that's the way I would read
21 it.
22 MR. ALLINGHAM: I'm going to mark
23 now as Exhibit 23 a document bearing Bates
24 numbers BPD466 through 479.

66 (Pages 258 to 261)

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1 (WHEREUPON Hattier Exhibit 23 was
2 marked for identification).
3 Q. You'll see that this was a package of
4 materials which were numbered by your side
5 sequentially --
6 A. Uh-hum.
7 Q. -- and in the September 20, 2004 policy
8 committee meeting agenda there is an agenda item
9 number six which reads, discuss Dr. Hattier's
10 concern of appreciation and tolerance of the
11 religious views of others?
12 A. Correct.
13 Q. Do you recall having asked the policy
14 committee in connection with its consideration of --
15 A. Yes, I did.
16 Q. Let me finish my question, of the School
17 Board Prayer Policy to take into account your
18 concern as expressed?
19 A. My concern at that time was not in relation
20 to the Prayer Policy at all. It had to do with the
21 comments that the young Dobrich gentleman had stated
22 that he had been called Jew boy in school and that
23 you know our teachers did nothing to correct that.
24 I got on the phone some time after the meeting and

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1 asked, I believe it was, Mr. Hudson up at the
2 school, I said did anybody ever come to you and tell
3 you that he been called Jew boy and the answer was
4 no.
5 Then I called our other people and asked
6 what is the policy regarding calling names of any
7 child whether it's four eyes, railroad mouth, you
8 know, buck tooth, rabbit breath, I mean pick one,
9 okay. And I was assured that we had policies that
10 dealt with name calling. And I was disappointed
11 that if Mrs. Dobrich's son had been called a name
12 such as Jew boy, which I do not approved of name
13 calling whatsoever, not like that, and that had it
14 been reported to us and had we been given an
15 opportunity to address it that we would have done
16 so.
17 But in what I did in talking to the school
18 and the people involved, we had no knowledge
19 whatsoever that she had complained about it, that
20 one came out of it blue.
21 And if you have any other information other
22 than that please again let me know. My daughter let
23 me back up a little bit, in or around the same time
24 period my young daughter, Hannah, had written some

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1 notes back and forth to another girl in class where
2 they were accusing another girl of being fat and
3 ugly. Okay, and the other girl somehow intercepted
4 the note and it came home to our family that my
5 daughter was involved in calling another girl fat
6 and ugly.
7 Well, in our house we don't tolerate name
8 calling, we don't approve of it and it was the Lord
9 Baltimore School, I believe it was under Mrs. Smith
10 was still principal at that time, rightly called us
11 and said hey what is your daughter doing. And we
12 looked into it and Hanna was disciplined, punished
13 and talked to about it and had to write a letter of
14 apology and come forward and say I'm sorry I didn't
15 mean to call you fat and ugly. And that was
16 certainly the appropriate thing to do.
17 And I think had we been informed at the
18 district that somebody was running around calling
19 you know the young gentleman Jew boy that we would
20 have reacted similarly at that other building, there
21 would be no reason not to. The two things happened
22 basically contemporaneously.
23 Q. Do you doubt Alex Dobrich's credibility --
24 A. Not a bit.

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1 Q. -- in reporting that he was called Jew boy?
2 A. Not a bit, I believe he probably was, okay.
3 On the other hand I don't know when he was called
4 that, I don't know what the age of the kids was
5 involved, and you know apparently you have children,
6 I'm going to make a guess, okay, we have four kids
7 and some of the nastiest people on earth are
8 children, especially to one another. And it is up
9 to us as adults to discipline them and correct them
10 and teach them socially appropriate behaviors.
11 So, if some kid somewhere had a bad day and
12 decided to call some other child a name, certainly
13 it would not have been condoned by the school
14 district. And I'm not doubting what the young
15 gentleman said at all. I'm only wondering why Mrs.
16 Dobrich did not come forward if this was an issue
17 with her and say something to the school or the
18 appropriate school authorities about it.
19 Because again in my own case with what
20 happened to me at or about the same time period, we
21 had to deal with it immediately. It was sent home
22 to us the guidance counselor had talked to the kids,
23 we had to write a letter of apology regarding it and
24 at this particular point Hannah and that young lady

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1 do still get together as friends, and they associate
2 with one another. That's why I say I don't doubt
3 the young gentleman.
4 Q. You seem to be a pragmatic person, do you
5 really think that someone who called Alex Dobrich a
6 Jew boy could come to the view that Alex and he
7 could be good friends?
8 MR. GOSSELIN: Objection.
9 A. Yeah, absolutely. Look, my son is a bit
10 fiery and I've heard him say things to the boy next
11 door and I've heard the boy next door say things
12 equally to my son and by the next morning they are
13 trying to figure out who can get the go-kart
14 started.
15 Okay, first off, do you have daughters?
16 It's a question, okay, I have found that girls in
17 general seem to be bit more difficult in name
18 calling than boys are. Girls, young girls at least
19 seem to be a bit less forgiving about things than
20 young men are. This is a general statement, but I
21 believe in a general it's probably true.
22 Q. You are not suggesting, are you Dr. Hattier
23 that calling a girl fat and ugly is the equivalent
24 of calling one of the few Jews in a school Jew boy,

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1 are you?
2 A. I'm saying --
3 MR. GOSSELIN: Objection. Go
4 ahead.
5 A. I'm saying that name calling is name
6 calling. Whether it's slant eyes, four eyes buffalo
7 breath, again, pick one.
8 Q. You think they are all the same?
9 A. I believe it's an insult.
10 Q. But you think they are all of equal
11 seriousness?
12 A. I believe they are insults.
13 Q. You are not answering my question --
14 A. Yes, I do believe.
15 Q. Do you believe they are of equal
16 seriousness?
17 MR. GOSSELIN: Objection.
18 A. Yes, I do, they are insults, and they
19 should be dealt with as such.
20 Q. And you think that they, the discipline
21 that should be metered out should be the same for
22 someone who calls someone with braces tinsel teeth
23 as someone who called a boy wearing a yarmulke Jew
24 boy?

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1 A. I think.
2 MR. GOSSELIN: Objection.
3 A. Sorry. I think they are both derogatory
4 and I think they are both designed to hurt another
5 individual and they are both designed to make
6 another individual feel small, and as such neither
7 one of them is acceptable behavior. I mean if you
8 wish to put an emotional value of whatever type you
9 are certainly free to do so, but to me it's an
10 insult.
11 And my concerned at this particular time
12 period had been to see to it that we did have
13 something in our policies that would address those
14 issues, if we didn't already have them.
15 Q. At the August 24 meeting do you recall a
16 comment in which someone suggested that Mrs. Dobrich
17 might disappear like Madelyn Murray-O'Hare?
18 A. Yes.
19 Q. How did you feel about that comment?
20 A. As I told you earlier some things were said
21 that should not have been said and were clearly
22 inappropriate.
23 Q. You understood that to be a threat to
24 Mrs. Dobrich did you not?

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1 A. Yes, I did.
2 Q. What was done to silence that person from
3 making that threat in the context of that highly
4 volatile meeting?
5 A. Not so much.
6 Q. How made that threat?
7 A. I couldn't begin to tell you. We had a lot
8 of people talking that day.
9 Q. Has it come to pass that someone in a
10 public comment session has been asked to sit down
11 because what they were saying was inappropriate?
12 A. Yes.
13 Q. And that's happened for example when
14 someone begins to discuss an individual school
15 district employee?
16 A. Yes.
17 Q. Because the Board has a policy to make sure
18 that concerns about individual school district
19 employees should be dealt with privately, not in
20 public?
21 A. Yes.
22 Q. But it's okay in your view, and in the
23 views of the Board to let members of the community
24 threaten Mrs. Dobrich with disappearance like a

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1 renowned atheist who was later found dismembered?
2 MR. GOSSELIN: Objection.
3 **A. All right, I think the best way to express**
4 **my feelings at that time would be stunned that**
5 **somebody would be stupid enough to make comments**
6 **like that in an open meeting.**
7 Q. Dr. Hattier, this person spoke for lost two
8 minutes did someone think about saying to Mr. Walls
9 tell that person to sit down?
10 **A. Not to my knowledge.**
11 Q. In retrospect do you think that you should
12 have done that?
13 **A. Absolutely.**
14 Q. And every other Board member should have
15 done it, don't you think?
16 **A. I would think so.**
17 Q. Was that the only threatening comment made
18 about Mrs. Dobrich at the August 24 meeting?
19 MR. GOSSELIN: Go ahead.
20 **A. That's the one that I remember the most. I**
21 **don't remember all of the specifics. Like you**
22 **noted, there were a lot of people who talked that**
23 **particular day.**
24 Q. Do you remember comments that Alex Dobrich

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1 should take his yarmulke off before he spoke before
2 that Board meeting?
3 **A. No.**
4 Q. Would you like me to show you the tape?
5 **A. I believe you.**
6 MR. GOSSELIN: Objection. If you
7 have got a tape you can look at it.
8 Q. Did you hear the comments that if Mrs.
9 Dobrich would merely raise her child right in the
10 Christian faith she wouldn't have any problems with
11 the district's practices?
12 **A. Comments like that might have been made.**
13 Q. Did you think those were appropriate?
14 **A. You know what --**
15 MR. GOSSELIN: Objection.
16 You can answer.
17 **A. Okay. I'm not going to tell you how to**
18 **raise your child. I'm not going to tell you how to**
19 **behave in public. You know if you want to make a**
20 **fool out of yourself on the stand and go for it**
21 **that's your entire privilege.**
22 **Okay, and something like that as a**
23 **practicing chiropractor I'm used to people making**
24 **fun of what I do on a fairly regular basis. And I'm**

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1 **also sued to considering what the sources are and I**
2 **end up flushing most of it, okay. So, if somebody**
3 **wants to make a fool out of themselves and make**
4 **comments like that in an open meeting to my mind the**
5 **thing speaks for itself.**
6 Q. Let me ask you this question. Did you view
7 the atmosphere that existed at that meeting as
8 highly intimidating to Mrs. Dobrich and her family?
9 **A. It could have been seen that way --**
10 MR. GOSSELIN: Objection.
11 Q. By Mrs. Dobrich?
12 **A. It could have seen that way.**
13 Q. Don't you think that the comment, some of
14 the comments that I just reviewed with you were
15 intended to intimidate Mrs. Dobrich and her family?
16 MR. GOSSELIN: Objection. Let's
17 take a break everybody seems to be getting
18 a little excited right here. Let's take a
19 break, five minutes.
20 MR. ALLINGHAM: I'd like an answer
21 to my question.
22 Q. Don't you think those comments were
23 intended to intimidate Mrs. Dobrich and her family?
24 **A. I can't --**

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1 MR. GOSSELIN: Objection.
2 **A. I can't speak for what somebody else had on**
3 **their mind. It would appear that way on the**
4 **surface.**
5 Q. Didn't you think it was your duty as a
6 Board member to ensure that comments made during the
7 public comment section of Board meetings were not
8 used to intimidate other persons at the meeting?
9 **A. In retrospect I agree with that.**
10 MR. GOSSELIN: Objection.
11 MR. ALLINGHAM: All right, we
12 can take a five minute break.
13 MS. DUPHILY: We are going off the
14 record at approximately 4:48 p.m..
15 (WHEREUPON a brief recess was
16 taken)
17 MS. DUPHILY: Back on the record
18 at approximately 4:55 p.m..
19 Q. you told me that you did not call
20 Mr. Gaffney's show and offer to come on the show in
21 order to increase attendance at the August 24 Board
22 meeting, correct?
23 **A. Correct.**
24 Q. You were just on the show to correct public

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1 misconceptions?
2 **A. Correct.**
3 Q. Have you ever contacted any community group
4 prior to August 24 church group, whatever to urge
5 them to attend the August 24 meeting?
6 **A. No.**
7 Q. Do you know whether any Board member did?
8 **A. No.**
9 Q. Do you know what prompted the increased
10 attendance over normal at the August 24 meeting?
11 **A. If I recall correctly a lot of it had come**
12 **out on the radio, people had called Mr. Gaffney's**
13 **program and suggested that there was going to be a**
14 **big meeting of some type and that it was going to be**
15 **a fairly heavy issue where we are discussing it and**
16 **if they wanted input they should go to the meeting.**
17 Q. Would I be correct in understanding that
18 Mr. Gaffney's ideological perspective would also be
19 consistent with what you characterize as traditional
20 American values?
21 **A. I would say that he's leaning more in that**
22 **direction, yes.**
23 Q. Did you give an interview to Nella Banerjee
24 of the New York times?

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1 **A. Yes, I did.**
2 Q. In that interview did you tell Nella
3 Banerjee that Dr. Hattier had called WGMD to discuss
4 the issue of school board prayer?
5 **A. Yes, I did.**
6 Q. And did you tell Nella Banerjee that Mr.
7 Gaffney and others had encouraged people to go to
8 the August 24 meeting?
9 **A. I believe I did.**
10 Q. Who were the others that you were referring
11 to?
12 **A. Oh, other people on his radio program. You**
13 **had Ron Letterman -- Mr. Gaffney's program is**
14 **divided into both national feed and local feed.**
15 **From nine, sorry from 5:30 to 9 is usually Dan he**
16 **has Dr. Laura on from 9 to 12, 12 to 3 is Rush**
17 **Limbaugh, 3 to 6 would have been local, 3 to 7 would**
18 **have been a local person Ron Letterman and after 7**
19 **o'clock it switches back to a national feed for the**
20 **rest of the evening all the way through to morning.**
21 Q. So, it pretty much cuts across the entire
22 political spectrum?
23 **A. My political spectrum, yes.**
24 Q. Do you know who Harold Johnson is?

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1 **A. No, I do not.**
2 Q. Mr. Johnson is said to be a former Indian
3 River School Board member, does that refresh your
4 recollection about who he is?
5 **A. That could be, yes.**
6 Q. Do you know when Mr. Johnson was the person
7 who made the Madelyn Murray-O'Hare comment?
8 **A. No, I do not.**
9 Q. Do you know whether Mr. Johnson wrote a
10 letter to the editor supporting Mr. Bireley's
11 re-election campaign?
12 **A. I believe he did.**
13 Q. How did that come to your attention?
14 **A. As I stated earlier I don't generally read**
15 **the letters to the editor anymore. Occasionally I**
16 **will open it up during the election time period.**
17 **I've read one or two of them occasionally just to**
18 **see who was writing in because it seemed as if the**
19 **letter writing policy for The Wave had changed from**
20 **the year that I was running to the year that Mr.**
21 **Bireley was running.**
22 Q. What do you mean?
23 **A. The year that I was running they would not**
24 **print positive letters on either side.**

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1 Q. That's not very productive?
2 **A. No for me nor for Mr. Ellings, either,**
3 **Lloyd Ellings ran against me, a fine gentleman.**
4 **With Mr. Bireley's election however, a year later**
5 **they seemed to have reversed that policy and were**
6 **allow supportive letters.**
7 Q. I have some questions about the comments
8 that were made at the August 24 Board meeting, and I
9 will try not to be so heated about it, for which I
10 apologize.
11 **A. Okay.**
12 Q. A comment was made by a person named Gary
13 Knapps that the country was founded by Christians
14 with the intention of speaking the name of Jesus.
15 To you agree with that statement?
16 **A. I think the contract was founded by**
17 **individuals of Christian faith. Some of did speak**
18 **the name of Jesus and some who didn't. At least as**
19 **I understand history.**
20 Q. When you say the country was founded by
21 persons of Christian faith, you mean a majority of
22 persons of Christian faith?
23 **A. Yes.**
24 Q. A person named Dorinta Peacock commented

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1 that Christians need to take a stand. Do you agree
2 with the comment that respecting issues like School
3 Board prayer, prayer in schools and prayer at
4 graduation that Christian need to take a stand?
5 **A. I think that all people of faith should be**
6 **taking a stand at this particular point. It should**
7 **not be limited to Christians. As I stated earlier**
8 **when you take a look at the landscape that's out**
9 **everything from removing the Ten Commandments blocks**
10 **to trying to get in God we trust out of coins, to me**
11 **is all part of a broader effort to essentially**
12 **remove religion from our lives altogether, at least**
13 **in the public square.**
14 **So, I don't believe that it should be**
15 **limited to Christians, it should be all individuals**
16 **of faith.**
17 Q. To the extent that Miss Peacock's comment
18 was limited to Christians would you disagree with it
19 to that extent?
20 **A. Yeah, yes.**
21 Q. A woman named Judy Smith was recorded as
22 saying that, "Jesus is the best example that any
23 parent could have for their child." Do you agree
24 with that comment?

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1 **A. I believe that Jesus is one of the better**
2 **examples that people could look in their lives. I**
3 **think there is a lot of wonderful people, people**
4 **that we can look up to in the history of the world.**
5 Q. A woman named Stephanie Heywood commented,
6 sorry, "Christ will deny anyone who has denied him."
7 Do you agree with that comment?
8 **A. This is her belief, not mine.**
9 Q. The Reverend Worthy commenced that heaven
10 would be filled with Christians. Do you take the
11 same view as the Reverend Worthy?
12 **A. I believe that to be his belief.**
13 Q. It is your belief that heaven is not
14 limited to Christians?
15 **A. Quite frankly even though I believe in**
16 **Christ as the Son of God I'm not convinced as of yet**
17 **that there is a heaven or a hell.**
18 Q. Would the School Board Prayer Policy
19 prohibit a Board member from including each of these
20 comments as a portion of his invocation?
21 **A. I would believe that, yes they would**
22 **because that would be stepping over the line and has**
23 **nothing to do with splenification.**
24 Q. Is there a district policy that requires

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1 the School Board to hold public forums each year?
2 **A. I don't know.**
3 Q. I think I asked you this question, but
4 forgive me if I did, and it's correct that the
5 School Board has never held a public forum on
6 religion in schools?
7 **A. No. I don't believe that we have, no sir.**
8 Q. I'm going to try to short circuit some of
9 this. I have lot of minutes that I could go through
10 with specific examples, but I'm going to try general
11 questions --
12 **A. Okay.**
13 Q. -- And if we can accomplish it that will be
14 great. Is it correct that students of the district
15 routinely attend Board meetings?
16 **A. Yes.**
17 Q. And sometimes to receive awards?
18 **A. Yes.**
19 Q. Sometimes to recognized for their awards
20 achieved outside of the Board's --
21 **A. Yes.**
22 Q. Sometime to perform for the Board?
23 **A. Yes.**
24 Q. Sometimes for the purpose of presenting the

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1 colors?
2 **A. Yes.**
3 Q. And sometimes as student government
4 representatives to present their concerns to the
5 Board?
6 **A. Or their positive comments, yes.**
7 Q. In fact at some point the Board set aside a
8 specific portion of the agenda for that purpose?
9 **A. I believe so, yes.**
10 Q. Okay. Also students can appear for
11 purposes of defending or explaining themselves on
12 disciplinary action?
13 **A. I'm going to say no to that one because**
14 **that's more under the disciplinary areas where they**
15 **would do that either to the hearing or if there is**
16 **going to be something like that we usually do that**
17 **at a separate hearing, and to allow the matter to**
18 **either have an attorney be represented or to give**
19 **adequate weight to it, but it would not happen in a**
20 **public session, and I don't think we've done it in**
21 **an executive session. Not that I remember.**
22 Q. So, to the extent that students participate
23 in disciplinary proceeding that proceeding would not
24 be open with a prayer?

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1 **A. No. That happens, disciplinary proceedings**
2 **happen usually at a hearing environment much like**
3 **what we have here. Generally there is an audio**
4 **recording which is later transcribed, we don't use**
5 **an official transcriber like this gentleman here,**
6 **but the notes are transcribed they are sent to**
7 **everybody, I believe that the State of Delaware has**
8 **a whole series of rules and regulations in terms of**
9 **law these things are suppose to be held.**
10 **Q. Are you aware of any instance in which a**
11 **student has been invited to a School Board meeting**
12 **and the declined the invitation?**
13 **A. Yes.**
14 **Q. Are you aware of any such instance in which**
15 **the student declined the invitation for reasons**
16 **other than a conflict in scheduling?**
17 **A. No.**
18 **Q. Is it your belief, and I'm not asking about**
19 **the Board as a whole --**
20 **A. Okay.**
21 **Q. -- but just your belief that a student who**
22 **is invited to attend a School Board meeting would**
23 **feel that it is expected of him or her to attend**
24 **that meeting?**

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1 **A. No.**
2 **MR. GOSSELIN: Objection.**
3 **A. We have too many of them who don't.**
4 **Q. I am going to ask you some questions about**
5 **the history of opening the Board meetings with**
6 **prayer?**
7 **A. Okay, sir.**
8 **Q. You can speak I take it from personal**
9 **knowledge going back least to 2002?**
10 **A. 2000 actually because that's when I started**
11 **attending School Board meetings.**
12 **Q. So you went for a couple of years before**
13 **you were elected?**
14 **A. I used to go about every other month.**
15 **When I ran in 2000, actually it was prior to that,**
16 **maybe it was early 2000 I felt that even though I**
17 **lost the election in the year 2000 that I did have**
18 **an interest in the schools so I stayed active with**
19 **the finance committee to try to understand the**
20 **intricacies of running the school finances which is**
21 **not like anything that anybody in their right mind**
22 **would ever do, again you have experience with that,**
23 **sir, and I felt that you know a couple of years I**
24 **might understand something. And how after seven I**

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1 **sort of do. And I would go to School Board meetings**
2 **periodically just to see what they were doing. It**
3 **was not on a regular basis however until the year**
4 **2002.**
5 **Q. Okay, but you were there frequently enough**
6 **to observe that prayers were offered?**
7 **A. Yes, sir.**
8 **Q. Prior to 2000, am I correct that your**
9 **knowledge on the issue of the history of the Board's**
10 **practice is based on hearsay, someone told you?**
11 **A. Someone told me, that's correct.**
12 **Q. Who told you? I just want to pin down who**
13 **I should be asking these questions of?**
14 **A. From what I understand there are records**
15 **going back to 1971 where I believe it was a**
16 **gentleman name Proudfoot who first suggested that we**
17 **should be doing this. I have queried and tried to**
18 **locate people prior to that time period, regrettably**
19 **many of them are now deceased and what I have done**
20 **is exactly what we find today that even though**
21 **almost everybody had somebody in a school setting**
22 **virtually nobody goes to a School Board meeting if**
23 **they don't have to.**
24 **Q. So, who told you, what persons told you**

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1 **about what happened prior to 2000? For example, who**
2 **told you about Mr. Proudfoot?**
3 **A. I believe it may have come up in a**
4 **discussion with Mr. Gosselin in terms of reviewing**
5 **some of the notes that he had available. And other**
6 **than I can ask Mr. Bireley because Mr. Bireley has**
7 **been on the Board since roughly 1974 or '73. He is**
8 **a true glutton for punishment and I know that he is**
9 **aware of if going all the way back to that time**
10 **period.**
11 **Q. Well, it's a very profitable job?**
12 **A. Very profitable.**
13 **Q. Somebody has to do it?**
14 **A. No, it's not.**
15 **Q. I know. I was really trying to get at**
16 **people who told you or informed you or judgment**
17 **which you've talked about several times today, that**
18 **this Board has a history going back more than 30**
19 **years --**
20 **A. Right.**
21 **Q. -- of offering prayers at meetings. So,**
22 **you told me that Mr. Gosselin informed you that a**
23 **fellow named Mr. Proudfoot suggested it back in 1971**
24 **as a good thing for the Board to do?**

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1 **A. Which was right after the consolidation,**
2 **but other than independently Mr. Bireley has taken**
3 **it all the way back to like I said 1974. This just**
4 **pushed it a few year farther back than that. But I**
5 **believe it's common knowledge from those people that**
6 **I have talked to my neighbor across the street was**
7 **on the Board in the late 1980s through 1992 and he**
8 **confirmed that they were doing it. You know, it's**
9 **pretty much whoever I can talk to.**

10 Q. Have you undertaken, is it possible to
11 undertake a research into what sorts of prayers were
12 offered?

13 **A. From what I have been able to tell, nobody**
14 **has ever written down the type of a prayer, or**
15 **nobody has ever really said what type of prayers,**
16 **no, I don't think that that's going to be possible.**

17 Q. So, our knowledge of history in the
18 district is that prayers were offered but we don't
19 know what he prayers were?

20 **A. Correct.**

21 MR. GOSSELIN: Who is our?

22 MR. ALLINGHAM: Dr. Hattier's
23 knowledge informed by whoever he's talked
24 to.

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1 MR. GOSSELIN: Okay.

2 Q. Am I correct that you have made an effort
3 to find out as much as you can about the history?

4 **A. Absolutely.**

5 Q. And is that because you saw that as an
6 important issue or just because of your interest in
7 history?

8 **A. Both.**

9 Q. Apart from talking to people did you
10 delve into documents of any kind?

11 **A. I don't have the time to delve into**
12 **documents. It has recently come to my attention**
13 **that some of the early School Board meetings might**
14 **be in the Delaware State Archives but I'm not in a**
15 **position at this time to take off whatever it takes**
16 **to go through looking at the Delaware archives. I**
17 **know that there might be some there. I have not**
18 **been able to identify any people living at this time**
19 **period who go back that far. There is one gentleman**
20 **I believe who could push us back to the 1960s. And**
21 **I've met several teachers that go back to 1951, but**
22 **they too didn't go to School Board meetings if they**
23 **didn't have to.**

24 Q. Combining your sense that — by the way,

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1 this notion that students routinely attend School
2 Board meetings, is that also part of the district
3 that students have always been part of the meetings?
4 **A. There seems to have been some kind of a**
5 **change in the quantity and amounts of awards that**
6 **were given out under Mrs. Hobbs versus other people.**
7 **It used to be that the awards, again this is what I**
8 **understand, that some of those awards would be given**
9 **out more in student assemblies of various types in**
10 **earlier time periods.**

11 **And one of the reasons that think our**
12 **School Board meetings run so interminably long is**
13 **because of some of those things that happen. So,**
14 **there seems to have been a shift of some type, and**
15 **we have discussed at this particular point simply**
16 **due to time that's something we still want to do.**

17 **Again I state, we are all volunteers we all**
18 **work for a living. I'm generally up 5 o'clock or**
19 **5:30 in the morning. I start my paperwork at 7,**
20 **start seeing patients at 8. And you know if you get**
21 **home at 2 o'clock in the morning first off you are**
22 **not going to fall asleep real easy, you are awake at**
23 **that point, so by the time you get to sleep you are**
24 **ready to wake back up. Are you truly sharp enough**

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1 **the next morning to do things.**

2 **You know in my business because I used my**
3 **hands is an issue, and that's something that I'm**
4 **hoping we can resolve in a pleasant way.**

5 Q. So, there has been an increase in the
6 number of awards given at the district level. In
7 the other areas that I talked about, students
8 expressing their delight or concern on particular
9 aspects of school life, presentation of colors,
10 performances of students, is it correct that that
11 goes back a long time?

12 **A. As far as I know that goes back a long**
13 **time.**

14 Q. So, is it fair for me to infer that the
15 long time practice of opening School Board meetings
16 with prayers coincides with the attendance of
17 students at those meetings?

18 **A. Probably.**

19 Q. Have you ever heard any Board member
20 express opposition to student involvement in Board
21 meetings or support for limiting student involvement
22 at Board meetings?

23 **A. Recently.**

24 Q. Who is that?

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1 **A. A lot of us simply because if there was a**
2 **way we could eliminate that first half an hour, 45**
3 **minutes it might get us home by 11 o'clock or 11:30.**
4 Q. Oh, that's the issue --
5 **A. Yes and that there might be a more**
6 **appropriate way to handle that particular item.**
7 **Others than that I'm not aware of any.**
8 Q. On the issue of the prayers that would be
9 offered you expect to be on a rotational basis at
10 least offered the opportunity to give prayers --
11 **A. Yes, sir.**
12 Q. -- before the Board meetings?
13 **A. Yes, sir.**
14 Q. Is it your intent to continue to use
15 historical prayers of some kind?
16 **A. Yes, it is.**
17 Q. The policy, the School Board Prayer Policy
18 was adopted in October of 2004, since that time has
19 a Board member offered a prayer or moment of silence
20 at the beginning of every meeting?
21 **A. I believe so.**
22 Q. And of those meetings can you give me a
23 ballpark so as to how many have opened with a prayer
24 and how many have opened with a moment of silence?

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1 **A. Most I would say open with a prayer of some**
2 **type, or a statement of some type because I have**
3 **also used nonreligious individuals. I've made**
4 **statements from Albert Einstein to open mine. I**
5 **recall at least two occasions of moments of silence.**
6 **And I have not made every Board meeting, I make**
7 **about 11, between ten and 11 per year, so I'm not at**
8 **all have them.**
9 Q. The Albert Einstein statement, have you the
10 text of the statements or prayers that you've
11 offered?
12 **A. I might be able to find that one because it**
13 **was fairly recent.**
14 Q. Why did you pick the Albert Einstein
15 statement?
16 **A. Because Albert Einstein in that particular**
17 **one was referring to the existence of God and how**
18 **that that was something that should play a role in**
19 **folks' lives. And that was a good way to look**
20 **beyond yourself. I can't remember the exact quote.**
21 **I'm not very good at exact quotes.**
22 Q. And you obviously thought that was adequate
23 to solemnize the proceeding?
24 **A. Absolutely.**

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1 Q. You told me earlier there have been
2 instances in which a School Board member has
3 declined to offer a prayer or lead a moment of
4 silence?
5 **A. Yes.**
6 Q. Can you tell me which Board members did
7 that?
8 **A. I want to say that it was probably**
9 **Dr. Isaacs but I cannot say that with a sense of**
10 **assurety.**
11 Q. Is there only one that you recall?
12 **A. That's it. My believe is that Mr. Bireley**
13 **will set these things up in advance to give us all a**
14 **chance to be prepared, and especially they know if I**
15 **do it that they know that I'm going to need a good**
16 **couple of days.**
17 Q. So, if Mr. Bireley sets these things up in
18 advance how did you know that Dr. Isaacs or whoever
19 it was had declined the opportunity?
20 **A. Because there was one Board meeting where**
21 **somebody did and that was early on when we were**
22 **still working non the process itself. That would**
23 **have been maybe early 2005, I don't remember. It**
24 **was something in that time frame.**

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1 Q. Did the minutes reflect that decline of the
2 invitation?
3 **A. I have no idea.**
4 Q. Since October 19, 2004 do you recall any
5 prayer offered by any Board member that you believe
6 violated policy BDA.1?
7 **A. No.**
8 Q. Prior to October 19, 2004 do you remember
9 any policy offered by any Board member that violated
10 Policy BDA.1?
11 **A. I don't think so.**
12 Q. Do you have in mind some prayer that you
13 think is close but you think in balance it was okay?
14 **A. No, to be honest I wasn't paying that close**
15 **attention prior to that time period.**
16 Q. In connection with paragraph three of the
17 Board policy on School Board prayer, do you think
18 there is a difference between overtly sectarian
19 prayer and proselytizing prayer?
20 **A. I'm not sure I understand your question.**
21 Q. Do you think it is possible to offer a
22 prayer directed to a particular sect, Christianity,
23 Islam, that is not intended to persuade or influence
24 its listeners to consider the religion it expresses?

74 (Pages 290 to 293)

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1 **A. As I stated earlier, I think if you are**
2 **going to include the Muslims into the group that if**
3 **any mention of God and not Allah his name be**
4 **praised, could be seen as a sectarian effort and**
5 **that it would probably be seen in a way that they**
6 **might not appreciate.**
7 **Okay, so in terms of whether it's**
8 **proselytizing or not, I don't think that it would be**
9 **proselytizing if you offer it in what you personally**
10 **belief. You know, you are not asking, if you are**
11 **not asking to convert or do things your way then its**
12 **your prayer, okay?**
13 **Q. The minutes reflect at least the ones that**
14 **we went over that in each case president Walls says**
15 **it is the history of the Board to have a prayer at**
16 **the beginning of the meeting which is voluntary**
17 **among the members of the Board of Education?**
18 **A. Right.**
19 **Q. Does president Walls actually say that each**
20 **time?**
21 **A. Yes.**
22 **Q. Does president Walls also say that no**
23 **school employee student in attendance or member of**
24 **the community in attendance shall be required to**

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1 **participate in any such prayer or moment of silence?**
2 **A. That is part of the general statement.**
3 **Q. He does say that?**
4 **A. I believe he is supposed to.**
5 **Q. Do you think that he is supposed to under**
6 **the new policy?**
7 **A. Yes.**
8 **Q. And it was the intention of the board that**
9 **those disclaimers be stated at each Board meeting,**
10 **not just once?**
11 **A. No, it should be stated at each Board**
12 **meeting.**
13 **Q. Okay.**
14 **MS. DUPHILY: We are going off the**
15 **record at approximately 5:25 p.m..**
16 **(WHEREUPON a brief recess was**
17 **taken)**
18 **MS. DUPHILY: Back on the record**
19 **at 5:25 p.m..**
20 **Q. These questions directed to you, not to the**
21 **Board as a whole. To you think that not being**
22 **permitted to open a School Board meeting with a**
23 **sectarian would mean that you were treated as a**
24 **second class citizen?**

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1 **A. I believe so.**
2 **Q. Have you ever been treated as a second**
3 **class citizen?**
4 **A. As I stated earlier as a practicing**
5 **chiropractor I'm used to getting a lot of barbs from**
6 **the medical community and even from attorneys in**
7 **situations like depositions where they basically one**
8 **side will make you out to be a very good individual**
9 **and the other side will make you out to be a dumb**
10 **cluck. So, in that sense, yes.**
11 **Q. You don't seriously think of that as being**
12 **treated as a second class citizen, do you?**
13 **A. I like to think -- you are being extremely**
14 **respectful in our conversations and I must that I**
15 **appreciate that very much. I don't think you have**
16 **crossed the line in any way. I have been parts of**
17 **depositions what I would have to say that attorneys**
18 **have been less than cordial, where they have been**
19 **more attacking and quite derogatory and demeaning.**
20 **And whether they mean that simply because of their**
21 **courtroom appearance or because they feel they have**
22 **to, or whether that's just the way they genuinely**
23 **are, I can't answer that. So, yes I do consider it**
24 **demeaning.**

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1 **Q. Demeaning, but when I ask the question**
2 **about second class citizen I mean has someone**
3 **treated you as if your rights were not equal to**
4 **other person's rights?**
5 **A. Not that I'm aware of.**
6 **Q. You've never had to a ride in the back of**
7 **the bus because you are a Christian?**
8 **A. No.**
9 **Q. Or drink from a different water fountain**
10 **because you are a Christian?**
11 **A. No.**
12 **Q. Did you happen to read Mr. Helms'**
13 **commentary about how he was tired of having to ride**
14 **at the back of the bus because he is a Christian?**
15 **A. No.**
16 **Q. Do you think that it's appropriate for**
17 **Mr. Helms to compare himself to Rosa Parks?**
18 **MR. GOSSELIN: Objection.**
19 **A. I think it's withing Mr. Helms' rights to**
20 **write and state whatever he who like to, as long as**
21 **it's not going to infringe on someone else's rights**
22 **or cause them to, you know, incite riots, et cetera.**
23 **Q. Am I right that no one has ever threatened**
24 **you or your family because you are a Christian?**

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1 **A. Correct.**
2 Q. Or threaten bodily harm to you because
3 you're a Christian?
4 **A. Correct.**
5 Q. And are you aware of any teacher trying to
6 convert your children to another religion?
7 **A. No.**
8 Q. Have you ever been harassed because you're
9 a Christian?
10 **A. No. Actually in terms of what my children**
11 **are going through, it depends on how you define**
12 **secular humanism and the way it's taught in schools,**
13 **but I believe that may be a separate philosophical**
14 **discussion.**
15 Q. I think you've addressed this, but I'm
16 going to ask the questions directly. As a Board
17 member do you or do you not believe that you are
18 obligated to take action in accordance with the
19 majority of what the majority of your constituents
20 want?
21 MR. GOSSELIN: Objection.
22 **A. I believe that I am elected by the people**
23 **who support me because they have faith in what I do,**
24 **and in the fact that I will do what my conscience**

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1 **dictates for me to do. And if they don't like it**
2 **come election time they are free to elect someone**
3 **else.**
4 **So, do I take the majority's viewpoint into**
5 **consideration, I probably do, but ultimately I am**
6 **going to act on what my own conscience tells me to**
7 **do.**
8 Q. Have you told any of your fellow Board
9 members who you believe the Does to be?
10 **A. I don't think so.**
11 Q. Have you heard any Board member tell
12 another Board member who that Board member believes
13 the Does to be?
14 **A. No.**
15 Q. Has there been any discussion either at
16 Board meeting or outside of Board meetings among
17 Board members that you are aware of in which the
18 identity of the Does has been discussed?
19 **A. Not between Board members. I've had**
20 **members of the public come up to me and tell me who**
21 **the Doe family is.**
22 Q. What's your response to that?
23 **A. My response to that is I can't confirm or**
24 **deny because I can't confirm or deny, I don't know.**

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1 **I'm assuming that what they tell me is correct.**
2 **I've had the same names pop up quite a few times so**
3 **that would be my assumption.**
4 Q. Who's told you that they know who the Does
5 are?
6 **A. Members of the community in a variety of**
7 **situations.**
8 Q. Who?
9 **A. I don't know that that's something that I**
10 **need to give out. They are members of the**
11 **community. Some patients of mine who brought it to**
12 **my attention, other family members, I'm sorry, not**
13 **my family members but people who have been family**
14 **friends with the Does in the past. Variety of**
15 **individuals.**
16 Q. Did you ask why they thought it was
17 necessary to try to figure out who the Does were?
18 **A. I don't know that they had to figure it**
19 **out.**
20 Q. Did you ask them why they were telling you
21 who the Does were?
22 **A. A lot of them wanted to know why we can't**
23 **release their name to the public.**
24 Q. Were they at the August 24th meeting in

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1 which the Madelyn Murray-O'Hare comment was made?
2 **A. Not that I'm aware of. I can't tell you**
3 **that.**
4 Q. Let me ask you personally, Dr. Hattier. Do
5 you have same sympathy with the Doe's desire to
6 remain anonymous given what happened at the August
7 24th meeting?
8 MR. GOSSELIN: Objection.
9 Go ahead.
10 **A. You know, I have a sympathy for them but**
11 **let me state that I actually have a high degree of**
12 **respect for the Dobrich family, all right, I really**
13 **do. I have a high respect for them because they**
14 **believed in something and they were willing to step**
15 **forward, just as I am now to defend the beliefs that**
16 **I have him. All right, and I think that if somebody**
17 **wishes to hide behind anonymity on an issue, you**
18 **know they are doing it out of fear or whatever, but**
19 **if they are right they are right.**
20 **And my understanding is that the thing that**
21 **the Doe family was originally complaining about,**
22 **which had something to do with the Bible Club, which**
23 **I was not aware of at the time period, okay there**
24 **were right, we fixed it. We corrected it. Okay,**

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1 **and other than I personally don't see what the issue**
2 **is.**

3 Q. You were personally present and observed
4 the treatment of Alex and Samantha Dobrich at the
5 August 24th Board meeting, correct?

6 A. Yes.

7 Q. Do think that the treatment of those two
8 children at that meeting, by community members,
9 might legitimately cause parents to be concerned
10 about the treatment that their children would get if
11 they relinquished anonymity?

12 A. Yes.

13 Q. I asked you earlier whether you are that
14 any of your children had tried to confirm who the
15 Does were and you said you were not aware of that?

16 A. No, I would prefer that my children not
17 have a clue as to who they.

18 Q. Am I also correct that you are not aware
19 that your wife or any member of your family has
20 taken any action to try to confirm who the Does are.

21 A. I would hope not.

22 Q. This is closing the loop for the record, I
23 would hope not means no you not area?

24 A. Take that as a no, yes, well, whatever, no.

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1 Q. This can go quickly. I have some
2 statements that you were quoted as having been to
3 the media. I really don't want to, I don't think
4 debate these statements just want to confirm that
5 you were quoted accurately?

6 A. Okay.

7 Q. I may have a question or two but I think
8 it's going to be --

9 MR. ALLINGHAM: This is Hattier
10 24. The Bates number is P104 and 105.

11 (WHEREUPON Hattier Exhibit 24 was
12 marked for identification)

13 Q. There is taken from Sussex County Online.
14 You are reported in the one, two, three four, fifth
15 paragraph as having been, as having said,
16 "Dr. Donald Hattier who opened last week's meeting
17 with a prayer penned by George Washington admitted
18 the School Board's current stance on prayer wouldn't
19 hold up in court?"

20 A. Incomplete quote.

21 Q. Can you complete it for me?

22 A. Yes. Graduation prayer. Graduation prayer
23 and prayer at school luncheons, other things. If
24 you compare what we were doing with the DOJ cite it

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1 **would not hold up. Incomplete quote.**

2 Q. Okay, so you did say this but you weren't
3 referring to the School Board prayer?

4 A. No, I was not, I was referring to the other
5 issues.

6 Q. And let me just ask you the question, and
7 are the current policies which have been adopted
8 since that time in your have view in compliance with
9 the Constitution?

10 A. Lordy, I hope so.

11 MR. ALLINGHAM: This is Hattier
12 25. And I will tell you in advance, Dr.
13 Hattier I have only the second page of this
14 article from The Wave. I don't know why.
15 It bears Bates number P122. I will see if I
16 can find the first page.

17 (WHEREUPON, Hattier Exhibit 25 was
18 marked for identification)

19 A. Yes, final paragraph.

20 Q. Is your comment accurately reported there?

21 A. Yes.

22 Q. Okay?

23 A. And again though that's based on my
24 findings afterwards. Okay, in other words, you look

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1 **back on what the law had been or had not been, start**
2 **looking at the aforementioned, you know citing, and**
3 **as you read the court cases, so that's where the**
4 **decades part came in.**

5 Q. Understood.

6 A. Okay.

7 MR. ALLINGHAM: This is
8 Hattier 26 bearing Bates numbers P290
9 through 293.

10 (WHEREUPON Hattier Exhibit 26 was
11 marked for identification)

12 Q. This is an August 27 article from the
13 Coastal Point?

14 A. Okay.

15 Q. If you --

16 A. I can't even see myself in there if you can
17 help me out, please.

18 Q. If you will look at the third page, the
19 last column, the second full paragraph you will see
20 district four representative Dr. Donald Hattier, do
21 you see that?

22 A. Uh-hum.

23 Q. "Responded to further public comments on
24 the issue by stating his personal support for prayer

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1 but acknowledging that the Board had no expectation
2 that it would be able to win any case taken to the
3 court with a pro prayer stand. He said the Board
4 was proceeding in forming the policy under the
5 guidelines of the State Education Department and
6 with the advice of the district's legal counsel?"
7 **A. Same incomplete quote. This has to be**
8 **again with the baccalaureate and the and graduation**
9 **policies.**
10 Q. And did individual Board members respond to
11 the public comment section with their own views?
12 **A. I don't think so.**
13 Q. Other than yourself?
14 **A. You mean in terms of what I am saying here?**
15 Q. Yeah.
16 **A. You know, based on what it is and based on**
17 **what's out there, this is what it is. Okay, we are**
18 **not going to be able to go to court and argue that**
19 **we should be able to have under our current policies**
20 **that a person should be allowed to invite a preacher**
21 **to come and talk to our graduation ceremonies.**
22 Q. Yes, sir, my question is much more limited
23 and I want to see if I can get you out of here. You
24 did make this comment?

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1 **A. Yes, I did.**
2 Q. With the clarification that you have given?
3 **A. Again, incomplete quote.**
4 Q. And my question was just did any other
5 Board member make a comment in response to the
6 public comment section of the meeting?
7 **A. Unless it's printed in here I'm going to**
8 **say no. And this, whatever comment I made here, who**
9 **is the author here, Pat Titus, Patricia Titus, this**
10 **probably would have been an interview that happened**
11 **afterwards during the break of some type. This**
12 **would have been a comment that would have been made**
13 **during the Board meeting itself.**
14 Q. I have two quick questions on the report of
15 the August 24 meeting. On page two of this exhibit
16 in the second column, look at the one, two, three,
17 fourth paragraph halfway down the paragraph here is
18 a sentence that begins, at times?
19 **A. Uh-hum.**
20 Q. And it reads, "At times the meeting
21 resembled a prayer meeting as much as a School Board
22 meeting with choruses of amen ringing in the
23 audience after speakers declared their believe and
24 their support for prayer in the schools."

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1 **A. Right.**
2 Q. "Few speakers drew any line between the
3 Board's policy on commencement ceremonies or other
4 school events and the policy of prayer said before
5 School Board meetings."
6 **A. Right.**
7 Q. I want to ask you, would you agree that at
8 times the meeting resembled prayer meeting?
9 **A. I don't know that I'd call it a prayer**
10 **meeting but I would say as I stated to you earlier I**
11 **don't think a lot of people really understood what**
12 **the issues were. Like the last sentence says few**
13 **speakers drew any lines. I think most of the**
14 **speakers were not aware what we were discussing was**
15 **a more limited realm.**
16 Q. There were choruses of amen --
17 **A. Yes.**
18 Q. -- and people?
19 **A. Yes.**
20 Q. -- cheering for people who expressed
21 support for prayer in schools?
22 **A. Yes. Yes I don't know if I would call it a**
23 **prayer meeting.**
24 Q. Revival meeting?

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1 **A. I wouldn't even call it -- definitely not a**
2 **revival meeting. I don't know if you have ever been**
3 **to a revival meeting, but I would not call it that**
4 **okay.**
5 Q. On the next page, second column right under
6 the big block quote from Mona Dobrich in the middle?
7 **A. Yes.**
8 Q. There is a statement from Representative
9 Hocker, do you know Representative Hocker?
10 **A. Yes, I do.**
11 Q. And Representative Hocker is quoted as
12 having said, "I'm a great believer in letting the
13 majority rule?"
14 **A. Yes.**
15 Q. Are you a great believer in letting the
16 majority rule on issues such as School Board prayer?
17 **A. Well --**
18 **MR. GOSSELIN: Objection. I think**
19 **he has covered that a couple times now?**
20 **A. I would think that as a general rule our**
21 **country is built on majority rule and that if a**
22 **majority would wish to vote for something we do have**
23 **to protect the interests of the minority, if you**
24 **will, but on the other hand if this is what the**

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1 majority would care to do it should be put up to a
2 vote.
3 And in there particular case I believe that
4 it should not be put up to a vote in the sense that
5 the public gets to go out and cast a ballot, this is
6 something that should be corrected by a
7 constitutional amendment to clarify. It's a more
8 difficult process, but at that particular point you
9 would know that everybody had played by the rules
10 and that's what we believe in.
11 My own concern is that a lot of these
12 things are not being done by any kind of vote
13 whatsoever but rather by judicial fiat, and that is
14 not something that our nation stands for.
15 MR. ALLINGHAM: Mark as Exhibit 27
16 P554 through 555.
17 (WHEREUPON Hattier Exhibit 27 was
18 marked for identification).
19 Q. Sorry, sir, I'm going as fast as I can.
20 A. That's okay.
21 Q. In a number of your web postings, Dr.
22 Hattier you referred to a gag order that had been
23 imposed by Judge Farnan?
24 A. Yes.

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1 Q. Prohibiting Board members from talking
2 about terms of the settlement?
3 A. Yes.
4 Q. In this article from the Coastal Point, you
5 are reported as having told Jonathan Starkey that
6 among other things, there was a provision of the
7 settlement that would have required the Board
8 members to bump one of the Plaintiffs' children to
9 the front of the line for admittance to the Southern
10 Delaware School of the Arts?
11 A. Yes.
12 Q. Did it occur to you that that was a
13 violation of the order imposed by the judge?
14 A. Okay, somewhere in the early part of this
15 year around January, February April there was a
16 great deal of confusion as to whether the gag order
17 had been lifted after the mediation collapsed.
18 I do remember seeing documents that said
19 that the mediation was over and some of these
20 things, especially regarding the children being
21 allowed into a school preferentially had already
22 been published in other newspapers as well. People
23 were asking me about it. I did not release that, it
24 was already out there.

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1 Then there was a time period where the gag
2 order was reinstated and then was lifted again. So,
3 There was a time period where I think there was a
4 great deal of uncertainty as to whether we had a gag
5 order or whether we didn't. And that had to do with
6 when the mediation efforts collapsed on or about
7 February of this year.
8 And at some point somebody released
9 everything and then they said they didn't and then
10 yes we did and no we didn't.
11 Q. Who was the somebody that released
12 everything?
13 A. Got me. I'm assuming it came from Judge
14 Farnan's office or, I don't know, who was the
15 mediation judge, it was a the lady's name I believe
16 started with a T.
17 Q. Judge Thine?
18 A. Judge Thine, thank you sir. Okay, there
19 was some confusion over that.
20 Q. Do you recall that Thomas Neuberger
21 disclosed to the press that the settlement offer
22 included a six figure money settlement?
23 A. He might have, I don't remember
24 specifically.

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1 Q. Did the Board authorize Mr. Neuberger to
2 make such a disclosure?
3 A. Not to my knowledge.
4 Q. Did Mr. Helms authorize Mr. Neuberger to
5 make such a disclosure?
6 A. I'm not going to speak for Mr. Helms.
7 Q. Were you a little dismayed when that
8 disclosure hit the press?
9 A. Not really. Sooner or later all this is
10 going to come out anyway.
11 MR. ALLINGHAM: All right, mark as
12 Hattier Exhibit 28 a document bearing Bates
13 numbers 559 through 560.
14 (WHEREUPON Hattier Exhibit 28 was
15 marked for identification)
16 A. Yes, I remember this one.
17 Q. Well, I'm going to interest of completeness
18 did you say to the reporter from the Delaware Wave,
19 Laren Hughes, "Serving us on Easter was tacky. I
20 was at home with my family and now they are
21 intruding on my personal life?"
22 A. Yes.
23 Q. And so that the record remains clear that
24 was not this lawsuit?

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1 **A. No, correct, thank you.**
2 MR. ALLINGHAM: This is a one page
3 exhibit which would be Exhibit 29, from the
4 Wave it bears Bates number P582.
5 (WHEREUPON Hattier Exhibit 29 was
6 marked for identification)
7 Q. This is an article in the Wave written by
8 Laren Hughes shortly after the School Board rejected
9 the settlement that had emerged from the mediation?
10 **A. Yes.**
11 Q. I have a couple of practical questions.
12 When the Board met in executive session at that
13 Board meeting, where did it meet?
14 MR. GOSSELIN: I am just going to
15 object for a second. You know most of this
16 stuff is fairly harmless. If you we are
17 going to be getting into the circumstances
18 surrounding the Board's rejection --
19 MR. ALLINGHAM: Nope this has to
20 do with School Board prayer and the
21 public's perception of this policy. I'm
22 not going to get into that.
23 MR. GOSSELIN: Okay.
24 MR. ALLINGHAM: I am trying hard

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1 to get him out of here.
2 **A. Where did we meet.**
3 Q. Could you hear what was going on in the
4 auditorium?
5 **A. No.**
6 Q. So, you were far enough away that you
7 didn't hear what was going on?
8 **A. If I remember correctly, we did this at**
9 **Sussex Central High School.**
10 Q. Correct.
11 **A. In which we are sitting way upstairs and**
12 **the auditorium is around the corner out in the back,**
13 **because when we are meeting there, when we meet at**
14 **Sussex Central High School we actually meet in the**
15 **cafeteria which is a goodly distance away down**
16 **several hallways and up, the way the building is**
17 **structured.**
18 Q. You couldn't hear what was going on in the
19 auditorium?
20 **A. No.**
21 Q. So, you can't confirm that the audience
22 members were singing hymns and Onward Christian
23 Soldier?
24 **A. No.**

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1 Q. Remind me to tell you my favorite ACLU
2 change in the ACLU initials I saw on a sign once.
3 You are quoted in this article, this is in
4 what is the second page of the newspaper article,
5 but on the first page of this. On the first column
6 about halfway down, as saying, "This is an
7 opportunity for us to find out if we are legally
8 correct in what we believe Hattier said. This is a
9 very tough issue but this is the right vote for me.
10 I know that I can look my kids in the face and know
11 I did the right thing?"
12 **A. Yes, I said that.**
13 Q. When up said this is an opportunity for us
14 to find out if we are legally correct in what we
15 believe, did you mean by rejecting the settlement
16 that provides an opportunity for us to find out if
17 we are legally correct in what we believe?
18 **A. No. All right, keep in mind that with the**
19 **settlement that there were a lot of other issues**
20 **there also and the fact that this may or may not go**
21 **to trial in terms of whether it's legal for us to**
22 **have a prayer at a School Board meeting or not, it**
23 **seemed to me that's the direction that it was going**
24 **to head into.**

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1 Q. So, and let me just see if I understand, I
2 think I have it. The settlement provided that the
3 Plaintiffs would agree not to challenge the existing
4 School Board Prayer Policy, correct?
5 **A. That was one of the less odious portions of**
6 **it, yes.**
7 Q. So that if that settlement had been
8 approved, on the one hand you would have dispensed
9 with the existing challenge to the School Board
10 Prayer Policy, but on the other hand you would not
11 have a final decision from a court as to whether
12 that policy was constitutional or not?
13 **A. Correct.**
14 Q. And so what you are saying here is the
15 rejection of the settlement provides an opportunity
16 for us to find out if we are legally correct in
17 believing that our existing School Board Prayer
18 Policy is constitutional?
19 **A. I believe that's what I intended, yes. One**
20 **thing I have learned about dealing with the press of**
21 **any type, even though they tape record you and you**
22 **might be aware of this yourself, sometimes what**
23 **actually hits print is still not necessarily the way**
24 **you said it or what you said.**

80 (Pages 314 to 317)

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1 MR. ALLINGHAM: This is Exhibit 30
2 P2716 through 2720.
3 (WHEREUPON Hattier Exhibit 30 was
4 marked for identification.)
5 **A. If I could offer a comment going back to**
6 **Exhibit Number 27.**
7 Q. Let me just find it, sir.
8 **A. Fourth paragraph first page, last sentence,**
9 **it says according to Thomas Neuberger and Hattier**
10 **that settlement offer included a six figure money**
11 **settlement. I would not have mentioned what the**
12 **settlement figures were, because I don't believe**
13 **that we were allowed to discuss the money involved.**
14 Q. So, you think in that aspect Mr. Starkey
15 got --
16 **A. I think in that respect he got that portion**
17 **of if incorrect, all right?**
18 Q. I appreciate the clarification.
19 Exhibit 30 is an article from Delaware
20 Beach Life?
21 **A. Uh-hum.**
22 Q. It has a picture on the first page and I
23 think the person in sort of the upper right corner
24 is you, is that correct?

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1 **A. Yes, it is.**
2 Q. Do I correctly understand that when someone
3 offers a prayer you bow your head?
4 **A. I do.**
5 Q. All right, did you give an interview to the
6 author of this article?
7 **A. Yes, I did.**
8 Q. On the second, sorry, the third page of
9 Exhibit 30, on the right hand column, second
10 paragraph --
11 **A. Okay, sorry black up?**
12 Q. Third page of the exhibit, right hand
13 column?
14 **A. Yes.**
15 Q. Second paragraph. You are reported as
16 having told the reporter that in addition to
17 answering 10-4 when asked if you're a Christian, you
18 often volunteer to offer the prayer. Was that an
19 accurate description of what you told the reporter?
20 **A. Yes.**
21 Q. This was --
22 **A. I don't know if volunteer is the right work**
23 **but if you tap me, I will do it.**
24 Q. Well, that was my question. I mean

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1 volunteer typically means hey, I'd like to do it.
2 **A. No, I don't typically say I'd like to do**
3 **it, but you tap me I will do it and I will try to do**
4 **the best job I can.**
5 Q. July 2006, a policy had been in place for
6 almost two years that required rotation?
7 **A. 2006, okay, right.**
8 Q. What context would it be appropriate for
9 you to volunteer to give the prayer under the Board
10 Prayer Policy?
11 **A. It wouldn't.**
12 Q. So, why did you tell the reporter --
13 **A. I'm not sure that's a correct quote. This**
14 **particular --**
15 MR. GOSSELIN: I don't think that
16 part is a quote.
17 **A. It's not. This particular individual was**
18 **have very difficult interviewer. Nella Banerjee,**
19 **and I've given a lot of interviews on this subject**
20 **in the past, but Nella Banerjee with the New York**
21 **Times would, rather like yourself, she was an**
22 **extremely fair individual. She worked her questions**
23 **very well, and she was, I believe, very responsible**
24 **in the way she reported things. This particular**

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1 **woman had an edge in her voice the entire time she**
2 **was giving the interview and I was very concerned**
3 **that she was not going to be quoting me correctly**
4 **and as it turns out I don't believe she did.**
5 Q. Okay, so you don't think that volunteer
6 work is your word?
7 **A. No.**
8 Q. Okay, that's fine. I just wanted to know.
9 You are reported two paragraphs below that as saying
10 that, "prayer works, look at the test scores in
11 Indian River, look at the number of superior schools
12 we have and the number of blue ribbon schools. We
13 have done good and part of that is because of
14 prayer."
15 **A. I believe that.**
16 Q. Did you say that to her?
17 **A. Something to this effect, yes, I did.**
18 Q. Part of that is because of prayer is a
19 generic statement. Do you believe that the
20 district's superior performance is as you've laid
21 them out here are due in part to the opening of
22 School Board meetings with a prayer?
23 **A. I think that's probably part of it, yes.**
24 Q. And explain to me how the opening of School

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1 Board meetings with a prayer contributes to improved
2 academic performance of the students?
3 **A. In the same sense the George Washington and**
4 **a lot of our founding fathers made the statement**
5 **that you cannot have a good nation without studying**
6 **religion and morality and without putting the glory**
7 **of God ahead of what you do. It's in the same**
8 **thing.**

9 **I mean I don't have my direct quotes with**
10 **me as I stated I'm not very good with direct quotes**
11 **without my notepad handy, but if you look at what**
12 **the founding fathers stated and they way they**
13 **approached things it was always with the idea in**
14 **mind that they would give the credit and the glory**
15 **to God and that good things were found that way.**

16 **Q. All right, so when you offer a payer at the**
17 **beginning of the School Board meeting you believe**
18 **that it will have an impact on the students of the**
19 **district?**

20 **A. I believe so.**

21 **Q. And is that an impact that is limited to**
22 **the students who are in attendance or does it apply**
23 **across the board in the district?**

24 **A. I hope it applies across the board.**

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1 **Q. And how will the students who are not**
2 **present find out the prayer that you've offered?**
3 **A. Okay now you're asking some interesting**
4 **questions about theology, but if a prayer is offered**
5 **does the other person need to know that you are**
6 **praying for them, or is it simply the fact that, you**
7 **know, the Lord would understand.**

8 **Q. I apologize. I misunderstood. I thought**
9 **that prayers were offered in order to invoke the**
10 **help of a higher power for the Board members to do**
11 **their best in discharging their responsibilities --**

12 **A. Yes.**

13 **Q. -- as Board members?**

14 **A. They are.**

15 **Q. I did not understand that you offer prayers**
16 **that a higher power assist the students of the**
17 **district in performing?**

18 **A. We have asked in terms of our prayers to**
19 **solemnify that we ask again, if you read what I**
20 **wrote above it, maybe it's not this one, yeah, it is**
21 **in this one, you know, praying is about giving**
22 **yourself up saying I don't know everything give me**
23 **help. It's about going above and beyond mere ego**
24 **and about being willing to humble yourself.**

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1 **And in that sense at a lot of our prayers**
2 **we will ask for the proper guidance for our**
3 **custodial staff, or our teachers to do the right**
4 **things as well. I mean it's about solemnifying the**
5 **Board meeting and maybe in that sense we step over**
6 **the line and pray for too many people, but we**
7 **certainly want our students to succeed well and at**
8 **least speaking for myself I do believe that God will**
9 **intervene in those things. Without being overly**
10 **simplistic about it.**

11 **Q. On the next page of the article, you are**
12 **quoted as saying and this is near the bottom of the**
13 **left hand most column. The reporter purports to**
14 **report the prayer that you gave at the August 24th**
15 **meeting which is the prayer from George Washington,**
16 **do you see that there?**

17 **A. uh-hum.**

18 **Q. And then quotes you as having said, "Our**
19 **founding fathers said that if this nation doesn't**
20 **have God it doesn't have squat?"**

21 **A. Yes, and actually that is a verbatim quote**
22 **absolutely. And if need be I can, they would not**
23 **have used the word squat, let's face it. They would**
24 **have phrased it far more 17th century or 18th**

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1 **century language but if need be I can produce the**
2 **quotes.**

3 **Q. I understand. Under the picture of you**
4 **which I don't know if was taken for this article,**
5 **but I want that photographer to take that picture if**
6 **it was because you look 20 years younger.**

7 **A. You and I both look young, sir.**

8 **Q. There is the question where does my right**
9 **to free speech stop and the prayer opponents rights**
10 **begin?**

11 **A. Something to that effect, yes.**

12 **Q. And that's a question that you asked?**

13 **A. That is a question that I asked throughout**
14 **all of this process.**

15 **Q. And have you formulated an answer?**

16 **A. No. Because even when I read the Supreme**
17 **Court rulings on this thing and again I'm not an**
18 **attorney and this is some incredibly dry reading, I**
19 **admire you guys for being able to plow through all**
20 **of this on a regular basis. Okay, you can find**
21 **where they can tease more things out of one or two**
22 **words and then come back and then some of them you**
23 **have got two concurring opinions and three**
24 **dissentings and I mean it makes incredible**

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1 interesting reading that the Supreme Court itself
2 hasn't even answered this particular question.
3 So no, I do not have an answer for this.
4 There I wish I did.
5 Q. Would you agree that the resolution of the
6 question yes does my right to free speech stop and
7 prayer opponents' rights begin, requires a balancing
8 of the two provisions in the First Amendment that
9 you and I talked about earlier in this deposition.
10 That is the prohibition against establishment of
11 religion and the free speech for the exercise of
12 one's religion?
13 MR. GOSSELIN: Objection.
14 A. Or prohibiting the free exercise thereof
15 and that apparently is what this is as all about.
16 Is there a balance in here, you know, that's what we
17 have to determine. At what point do the prayer
18 opponents start censoring what I wish to say and
19 instituting censorship, which as Americans we do not
20 generally believe in, and where am I stepping on
21 their toes.
22 Because at no time, at no time do I feel
23 that you know the Dobriches or the Does would have
24 been proscribed or prevented from, you know, telling

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1 me their beliefs, and had they chosen to do so I
2 would have stood in respectful silence and
3 essentially supported their right to do it, because
4 I believe they have that right.
5 Q. On the last page, second column from the
6 right, in the last paragraph you are reported as
7 having told the reporter that, "Rather than forcing
8 what you think on other people you see yourself as
9 defending the values of Sussex County. You see
10 yourself as protecting what Hattier who moved here
11 in 1986, calls one of the last great communities
12 with rural attitudes in the country."
13 First question, is that an accurate
14 reflection of what you said?
15 A. I think the general gist of it is correct.
16 Q. Could tell me what you mean by rural
17 attitudes?
18 A. People willing to be self sufficient, stand
19 up for themselves, not relying on government, people
20 being willing to make good decisions to help their
21 neighbors when they need it.
22 You know the attitude that the government
23 is not to be all to end all and basically you do
24 have a right to pray and to, how do I phrase this,

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1 that you don't, that you can just come and be and
2 live as a free American, and basically not
3 participate in high taxes and paying for things that
4 you don't believe in. In terms of what our schools
5 offer they are still some of the best in the state
6 for being a rural area, and for being able to
7 publicly pray if you want to. You want to put a
8 shotgun on the back of your truck if you want to
9 that's fine. You know, you want to drive your
10 pickup, it's whatever.
11 It's what we would see in the Walt Disney
12 movies from the 1950s.
13 Q. You didn't mean to suggest to the reporter
14 that the position you took on School Board prayer
15 you were defending all of those principles?
16 A. Part of it. I'm not quite sure --
17 Q. Explain to me how those principles are
18 connected to the position of the Board on School
19 Board prayer.
20 MR. GOSSELIN: Objection. I think
21 the question is what did you mean by rural
22 attitudes.
23 MR. ALLINGHAM: This is a
24 follow-up question when I said what did

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1 you mean by rural attitudes the answer
2 which we could have read back includes the
3 right be free from high taxes, the right to
4 carry a shotgun on the back of your pickup
5 truck, the right to whatever. None of
6 which, as I recall them have to do with
7 School Board prayer?
8 A. They don't in specific, but they are part
9 of again what I believe the nation was founded on
10 and I believe that something that I don't think any
11 of our founding fathers would have argued with.
12 They would have argued with you taking a tax out of
13 my paycheck to pay for a religious teacher in the
14 schools, and I too, would argue with that.
15 But having the right to pray where you want
16 to pray that was one of the things that did drive
17 the founder and the colonists from England in the
18 first place, so why are we in a situation now where
19 I have to careful simply because I have been elected
20 to a School board, which by the way does not pay
21 very well, and eats up humongous amounts of time and
22 is strictly a volunteer position. Why am I being
23 told at this particular point that because I have
24 chosen to do this that suddenly now I am an agent of

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1 the government.
2 I don't view myself in that light. I view
3 myself as a member of the general public who is
4 trying to do the best that they can for the schools
5 and why would my right to free speech in this
6 particular case be prevented. I don't understand
7 that.
8 Q. Just so you I understand you, you don't
9 view yourself as a government official functioning,
10 during the period of time when you function as a
11 School Board member?
12 A. I view myself as a School Board member, but
13 I don't necessarily view myself as a government
14 official, no I do not.
15 Q. Do you think that the members of the public
16 who come to School Board meetings see you as a
17 government official?
18 MR. GOSSELIN: Objection.
19 MR. ALLINGHAM: Well, that's an
20 important and clearly relevant
21 consideration.
22 MR. GOSSELIN: I have an objection
23 to form, you are asking him to speculate on
24 what other people might think.

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1 A. I would agree with that.
2 Q. No, my question is do you have a view as to
3 whether the members of the public who come to the
4 Board meetings think of you as a government
5 official?
6 MR. GOSSELIN: Objection?
7 A. Some might, some might not.
8 Q. You have taxing authority, correct?
9 A. Uh-hum which we exercise -- yes, we have
10 taxing authority.
11 Q. You spend the money that local residents
12 contribute to the district for the running of the
13 schools, you dictate how that money gets spent,
14 don't you?
15 A. Uh-hum.
16 Q. So, in your capacity as a School Board
17 member you tax the residents and then spend that
18 money for the greater good, correct?
19 A. Correct. I guess that makes me
20 government --
21 Q. Isn't that the essence of a government
22 function?
23 A. I guess so, then I'm wrong.
24 MR. ALLINGHAM: 31. P2593 to

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1 P2594.
2 (WHEREUPON Hattier Exhibit 31 was
3 marked for identification)
4 MR. GOSSELIN: Are we getting
5 close to the end cause we definitely way
6 beyond our six hours.
7 MR. ALLINGHAM: Yeah, this is the
8 last one.
9 A. What is the date on this?
10 Q. It's after April of 2006 because it reports
11 on the graphic arts lawsuit. This was taken off the
12 web and the web doesn't report the date?
13 A. Okay.
14 Q. So, I can only tell you that it's after
15 April 2006.
16 MR. GOSSELIN: I can tell you now
17 that I'm objecting to any questions
18 relating to the graphic arts lawsuit.
19 MR. ALLINGHAM: I'm not going to
20 ask any questions about the graphic arts
21 lawsuit. So it's yet another area on which
22 we are in complete agreement.
23 Q. First of all the fourth paragraph reports
24 that you told Jonathan Starkey, "It was one of the

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1 bigger issues but not the whole thing, Hattier said
2 of the School Board Prayer Policy. If you were to
3 read the entire settlement there would be things you
4 wouldn't sign off on either."
5 A. Correct.
6 Q. Is that a fair quote?
7 A. It is.
8 Q. Did you discuss with Mr. Starkey the
9 aspects of the settlement package that he would not
10 have signed off on either?
11 A. No.
12 Q. Do you recall statements from colleagues of
13 yours on the Board shortly after the February
14 meeting at which the settlement was rejected and
15 which they were quoted as saying we rejected the
16 settlement in order to preserve our right to pray
17 before School Board meetings?
18 A. I don't know what they said, but that's not
19 the only reason I rejected it.
20 Q. Are you saying that you rejected the
21 settlement in part because it would have left you
22 free to pray before School Board meetings in
23 accordance with the at policy?
24 A. I may not have understood your question

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1 **correctly if you could phrase it again please, sir.**

2 Q. I think probably I didn't ask the question

3 right?

4 **A. I apologize for my confusion.**

5 Q. Reggie Helms among others was quoted as

6 saying that the settlement was rejected in order to

7 ensure that Board members would remain free to offer

8 prayers before School Board meetings. Did you see

9 any of those quotes?

10 **A. No, not that I recall.**

11 Q. Am I correct that that was not a

12 consideration in your vote to disapprove the

13 settlement?

14 **A. No.**

15 MR. GOSSELIN: Objection.

16 Q. Since the settlement would have left the

17 School Board Prayer Policy in tact?

18 MR. GOSSELIN: Objection, you

19 don't have to answer questions about why

20 you voted not to accept the settlement.

21 MR. ALLINGHAM: Well, I think that

22 this -- I haven't asked any other questions

23 about the other aspects of the settlement.

24 I'm just asking about whether its impact on

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1 the School Board Prayer Policy contributed

2 to your vote to reject the settlement?

3 **A. No.**

4 Q. Okay.

5 MR. GOSSELIN: Do you have another

6 last one?

7 MR. ALLINGHAM: No, it's the same

8 one. Don't tease me, I told you it was the

9 last one and it was the last one.

10 It is my normal practice to say

11 give me five minutes to review my notes

12 but because I have already impinged on your

13 patience enough I will say that I'm done,

14 thank you very much for your courtesy.

15 **A. You are welcome.**

16 MS. DUPHILY: We are going off the

17 record at approximately 6:13 p.m..

18

19

20

21

22

23

24

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REPLACE THIS SHEET WITH ERRATA SHEET

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1 CERTIFICATE OF REPORTER
2 I, David A. Sroka, Registered Professional
3 Reporter and Notary Public, do hereby certify that
4 there came before me on October 10, 2006, the
5 deponent herein, DONALD HATTIER, who was duly sworn
6 by me and thereafter examined by counsel for the
7 respective parties; that the questions asked of said
8 deponent and the answers given were taken down by me
9 in Stenotype notes and thereafter transcribed by use
10 of computer-aided transcription and computer printer
11 under my direction.

12 I further certify that the foregoing is a
13 true and correct transcript of the testimony given
14 at said examination of said witness.

15 I further certify that reading and signing
16 of the deposition were not waived by the deponent
17 and counsel.

18 I further certify that I am not counsel,
19 attorney, or relative of either party, or otherwise
20 interested in the even of this suit.

21
22 David A. Sroka, RPR
23 Certification No. 259-RPR
24 (Expires January 31, 2008)

DATED: _____

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